(28,601)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 646.

SECURITY SAVINGS BANK, PLAINTIFF IN ERROR,

vs.

THE STATE OF CALIFORNIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 23, 1921.

a In the Supreme Court of the State of California.

Sac. No. 2890.

STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

SECURITY SAVINGS BANK (a Corporation) et al., Defendants; SECURITY SAVINGS BANK (a Corporation), Appellant.

TRANSCRIPT ON APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SACRAMENTO.

Honorable Peter J. Shields, Judge.

McCutchen, Olney & Willard,
Merchants Exchange Building, San Francisco,
Attorneys for Appellant.

U. S. Webb,
Attorney General, State of California;

Frank L. Guerena,
Deputy Attorney General, State of California,
Humboldt Bank Building, San Francisco,
Attorneys for Respondent.

Filed Oct. 10, 1918.
B. GRANT TAYLOR,
By DRYDEN,
Deputy.

1 In the Supreme Court of the State of California.

Sac. No. —.

STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

SECURITY SAVINGS BANK (a Corporation) et al., Defendants; SECURITY SAVINGS BANK (a Corporation), Appellant.

TRANSCRIPT ON APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SACRAMENTO.

Honorable Peter J. Shields, Judge.

2 In the Superior Court of the State of California in and for the County of Sacramento, Dept. No. 2.

No. 21679.

STATE OF CALIFORNIA, Plaintiff,

vs.

SECURITY SAVINGS BANK (a Corporation), VALDEMAR ANDERSON, J. W. Canfield, Anne C. Carrell, Christina Cooke, E. P. Cressy, Evan Edmunds, Josephine Farnfield, Marie Fortayon, Henry Hales, Anaise Hill, J. W. Livsey, Leonard Mager, James Millar, Joseph A. Miller, G. B. Mudge, Wm. Nixon, Martin O'Dea, John H. Prime, Eva A. Reynolds, Mrs. M. M. D. Robinson, Kate G. Schultze, A. E. and A. C. Stoddart, and Christian Torjesen, Defendants.

Complaint.

Now comes the plaintiff, State of California, and complaining of defendants, alleges:

I.

That Security Savings Bank is, and at all times herein mentioned was, a corporation doing a banking business in the State of California.

3 II.

That more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Valdemar Anderson, as a depositor therein, the sum of seven and 55/100 dollars ($7.55); that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon; that said money and account so deposited and all accruing interest thereon has remained unclaimed for more than twenty years after the same was so deposited and after the withdrawal of any part of the principal or interest, and now is unclaimed, and neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence, and said depositor is not known to the present or managing officer of said bank to be now living, and the Attorney General of said state has been informed of the foregoing facts.

And for a second cause of action the plaintiff alleges:

I.

That Security Savings Bank is, and at all times herein mentioned was, a corporation doing a banking business in the State of California.

4

II.

That more than twenty years prior to the institution of this action there was deposited with said bank to the credit of J. W. Canfield, as a depositor therein, the sum of fifteen dollars ($15); that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon; that said money and account so deposited and all accruing interest thereon has remained unclaimed for more than twenty years after the same was so deposited and after the withdrawal of any part of the principal or interest, and now is unclaimed, and neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence, and said depositor is not known to the president or managing officer of said bank to be now living, and the Attorney General of said state has been informed of the foregoing facts.

And for a third cause of action the plaintiff alleges:

I.

That Security Savings Bank is, and at all times herein mentioned was, a corporation doing a banking business in the State of California.

5

II.

That more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Anne C. Carrell, as a depositor therein, the sum of one and 61/100 dollars ($1.61); that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon; that said money and account so deposited and all accruing interest thereon has remained unclaimed for more than twenty years after the same was so deposited and after the withdrawal of any part of the principal or interest, and now is unclaimed, and neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing her present residence, and said depositor is not known to the president or managing officer of said bank to be now living, and the Attorney General of said state has been informed of the foregoing facts.

And for a fourth cause of action the plaintiff alleges:

I.

That Security Savings Bank is, and at all times herein mentioned was, a corporation doing a banking business in the State of California.

6 II.

That more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Christina Cooke, as a depositor therein, the sum of two thousand five hundred eighteen dollars ($2,518); that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon; that said money and account so deposited and all accruing interest thereon has remained unclaimed for more than twenty years after the same was so deposited and after the withdrawal of any part of the principal or interest, and now is unclaimed, and neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing her present residence, and said depositor is not known to the president or managing officer of said bank to be now living, and the Attorney General of said state has been informed of the foregoing facts.

And for a fifth cause of action the plaintiff alleges:

I.

That Security Savings Bank is, and at all times herein mentioned was, a corporation doing a banking business in the State of California.

7 II.

That more than twenty years prior to the institution of this action there was deposited with said bank to the credit of E. P. Cressy, as a depositor therein, the sum of five dollars ($5); that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon; that said money and account so deposited and all accruing interest thereon has remained unclaimed for more than twenty years after the same was so deposited and after the withdrawal of any part of the principal or interest, and now is unclaimed, and neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence, and said depositor is not known to the president or managing officer of said bank to be now living, and the Attorney General of said state has been informed of the foregoing facts.

And for a sixth cause of action the plaintiff alleges:

I.

That Security Savings Bank is, and at all times herein mentioned was, a corporation doing a banking business in the State of California.

8

II.

That more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Evan Edmunds, as a depositor therein, the sum of thirty-nine and 86/100 dollars ($39.86); that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon; that said money and account so deposited and all accruing interest thereon has remained unclaimed for more than twenty years after the same was so deposited and after the withdrawal of any part of the principal or interest, and now is unclaimed, and neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence, and said depositor is not known to the president or managing officer of said bank to be now living and the Attorney General of said state has been informed of the foregoing facts.

And for a seventh cause of action the plaintiff alleges:

I.

That Security Savings Bank is, and at all times herein mentioned was, a corporation doing a banking business in the State of California.

9

II.

That more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Josephine Farnfield, as a depositor therein, a sum of money unknown to plaintiff and upon which there is now due said depositor, as interest thereon, the sum of two and 72/100 dollars ($2.72); that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon; that said interest so accruing has remained unclaimed for more than twenty years after the withdrawal of any part thereof, and now is unclaimed, and neither said depositor nor any claimant of said interest has filed any notice with such bank showing his present residence, and said depositor is not known to the president or managing office of said bank to be now living, and the Attorney General of said state has been informed of the foregoing facts.

And for an eighth cause of action the plaintiff alleges:

I.

That Security Savings Bank is, and at all times herein mentioned was, a corporation doing a banking business in the State of California.

10 II.

That more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Marie Fortayon, as a depositor therein, the sum of five and 14/100 dollars ($5.14); that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon; that said money and account so deposited and all accruing interest thereon has remained unclaimed for more than twenty years after the same was so deposited and after the withdrawal of any part of the principal or interest, and now is unclaimed, and neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing her present residence, and said depositor is not known to the president or managing officer of said bank to be now living, and the Attorney General of said state has been informed of the foregoing facts.

And for a ninth cause of action the plaintiff alleges:

I.

That Security Savings Bank is, and at all times herein mentioned was, a corporation doing a banking business in the State of California.

11 II.

That more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Henry Hales, as a depositor therein, the sum of one and 3/100 dollars ($1.03): that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon; that said money and account so deposited and all accruing interest thereon has remained unclaimed for more than twenty years after the same was so deposited and after the withdrawal of any part of the principal or interest, and now is unclaimed, and neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence, and said depositor is not known to the president or managing officer of said bank to be now living, and the Attorney General of said state has been informed of the foregoing facts.

And for a tenth cause of action the plaintiff alleges:

I.

That Security Savings Bank is, and at all times herein mentioned was, a corporation doing a banking business in the State of California.

12

II.

That more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Anaise Hill, as a depositor therein, the sum of forty dollars ($40); that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon; that said money and account so deposited and all accruing interest thereon has remained unclaimed for more than twenty years after the same was so deposited and after the withdrawal of any part of the principal or interest, and now is unclaimed, and neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence, and said depositor is not known to the president or managing officer of said bank to be now living, and the Attorney General of said state has been informed of the foregoing facts.

And for an eleventh cause of action the plaintiff alleges:

I.

That Security Savings Bank is, and at all times herein mentioned was, a corporation doing a banking business in the State of California.

13

II.

That more than twenty years prior to the institution of this action there was deposited with said bank to the credit of J. W. Livesay, as a depositor therein, the sum of one and 47/100 dollars ($1.47); that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon; that said money and account so deposited and all accruing interest thereon has remained unclaimed for more than twenty years after the same was so deposited and after the withdrawal of any part of the principal or interest, and now is unclaimed, and neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence, and said depositor is not known to the president or managing officer of said bank to be now living, and the Attorney General of said state has been informed of the foregoing facts.

And for a twelfth cause of action the plaintiff alleges:

I.

That Security Savings Bank is, and at all times herein mentioned was, a corporation doing a banking business in the State of California.

14 II.

That more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Leonard Mager, as a depositor therein, the sum of one hundred and five dollars ($105); that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon; that said money and account so deposited and all accruing interest thereon has remained unclaimed for more than twenty years after the same was so deposited and after the withdrawal of any part of the principal or interest, and now is unclaimed, and neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence, and said depositor is not known to the president or managing officer of said bank to be now living, and the Attorney General of said state has been informed of the foregoing facts.

And for a thirteenth cause of action the plaintiff alleges:

I.

That Security Savings Bank is, and at all times herein mentioned was, a corporation doing a banking business in the State of California.

15 II.

That more than twenty years prior to the institution of this action there was deposited with said bank to the credit of James Millar, as a depositor therein, the sum of two and 98/100 dollars ($2.98); that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon; that said money and account so deposited and all accruing interest thereon has remained unclaimed for more than twenty years after the same was so deposited and after the withdrawal of any part of the principal or interest, and now is unclaimed, and neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence, and said depositor is not known to the president or managing officer of said bank to be now living, and the Attorney General of said state has been informed of the foregoing facts.

And for a fourteenth cause of action the plaintiff alleges:

I.

That Security Savings Bank is, and at all times herein mentioned was, a corporation doing a banking business in the State of California.

16 II.

That more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Joseph A. Miller, as a depositor therein, the sum of five and 28/100 dollars ($5.28); that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon; that said money and account so deposited and all accruing interest thereon has remained unclaimed for more than twenty years after the same was so deposited and after the withdrawal of any part of the principal or interest, and now is unclaimed, and neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence, and said depositor is not known to the president or managing officer of said bank to be now living, and the Attorney General of said state has been informed of the foregoing facts.

And for a fifteenth cause of action the plaintiff alleges:

I.

That Security Savings Bank is, and at all times herein mentioned was, a corporation doing a banking business in the State of California.

17 II.

That more than twenty years prior to the institution of this action there was deposited with said bank to the credit of G. B. Mudge, as a depositor therein, the sum of one dollar ($1); that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon; that said money and account so deposited and all accruing interest thereon has remained unclaimed for more than twenty years after the same was so deposited and after the withdrawal of any part of the principal or interest, and now is unclaimed, and neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence, and said depositor is not known to the president or managing officer of said bank to be now living, and the Attorney General of said state has been informed of the foregoing facts.

And for a sixteenth cause of action the plaintiff alleges:

I.

That Security Savings Bank is, and at all times herein mentioned was, a corporation doing a banking business in the State of California.

18 II.

That more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Wm. Nixon, as a depositor therein, the sum of four and 55/100 dollars ($4.55); that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon; that said money and account so deposited and all accruing interest thereon has remained unclaimed for more than twenty years after the same was so deposited and after the withdrawal of any part of the principal or interest, and now is unclaimed, and neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence, and said depositor is not known to the president or managing officer of said bank to be now living, and the Attorney General of said state has been informed of the foregoing facts.

And for a seventeenth cause of action the plaintiff alleges:

I.

That Security Savings Bank is, and at all times herein mentioned was, a corporation doing a banking business in the State of California.

19 II.

That more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Martin O'Dea, as a depositor therein, the sum of ten dollars ($10); that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part there, or the, or any, interest accruing thereon; that said money and account so deposited and all accruing interest thereon has remained unclaimed for more than twenty years after the same was so deposited and after the withdrawal of any part of the principal or interest and now is unclaimed, and neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence, and said depositor is not known to the president or managing officer of said bank to be now living, and the Attorney General of said state has been informed of the foregoing facts.

And for an eighteenth cause of action the plaintiff alleges:

I.

That Security Savings Bank is, and at all times herein mentioned was, a corporation doing a banking business in the State of California.

20 II.

That more than twenty years prior to the institution of this action there was deposited with said bank to the credit of John H. Prime, as a depositor therein, the sum of forty-seven and 24/100 dollars ($47.24); that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon; that said money and account so deposited and all accruing interest thereon has remained unclaimed for more than twenty years after the same was so deposited and after the withdrawal of any part of the principal or interest, and now is unclaimed, and neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence, and said depositor is not known to the president or managing officer of said bank to be now living, and the Attorney General of said state has been informed of the foregoing facts.

And for a nineteenth cause of action the plaintiff alleges:

I.

That Security Savings Bank is, and at all times herein mentioned was, a corporation doing a banking business in the State of California.

21 II.

That more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Eva A. Reynolds, as a depositor therein, the sum of six and 55/100 dollars ($6.55); that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon; that said money and account so deposited and all accruing interest thereon has remained unclaimed for more than twenty years after the same was so deposited and after the withdrawal of any part of the principal or interest, and now is unclaimed, and neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing her present residence, and said depositor is not known to the president or managing officer of said bank to be now living, and the Attorney General of said state has been informed of the foregoing facts.

And for a twentieth cause of action the plaintiff alleges:

I.

That Security Savings Bank is, and at all times herein mentioned was, a corporation doing a banking business in the State of California.

22 II.

That more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Mrs. M. M. D. Robinson, as a depositor therein, the sum of four and 25/100 dollars ($4.25); that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon; that said money and account so deposited and all accruing interest thereon has remained unclaimed for more than twenty years after the same was so deposited and after the withdrawal of any part of the principal or interest, and now is unclaimed, and neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing her present residence, and said depositor is not known to the president or managing officer of said bank to be now living, and the Attorney General of said state has been informed of the foregoing facts.

And for a twenty-first cause of action the plaintiff alleges:

I.

That Security Savings Bank is, and at all times herein mentioned was, a corporation doing a banking business in the State of California.

23 II.

That more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Kate G. Schultze, as a depositor therein, the sum of three and 03/100 dollars ($3.03); that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon; that said money and account so deposited and all accruing interest thereon has remained unclaimed for more than twenty years after the same was so deposited and after the withdrawal of any part of the principal or interest, and now is unclaimed, and neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing her present residence, and said depositor is not known to the president or managing officer of said bank to be now living, and the Attorney General of said state has been informed of the foregoing facts.

And for a twenty-second cause of action the plaintiff alleges:

I.

That Security Savings Bank is, and at all times herein mentioned was, a corporation doing a banking business in the State of California.

24

II.

That more than twenty years prior to the institution of this action there was deposited with said bank to the credit of A. E. and A. C. Stoddart, jointly, as joint depositors therein, the sum of one and 20/100 (1.20) dollars; that for more than twenty years prior to the institution of this action said depositors have not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon; that said money and account so deposited and all accruing interest thereon has remained unclaimed for more than twenty years after the same was so deposited and after the withdrawal of any part of the principal or interest, and now is unclaimed, and neither said depositors nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing their present residence, and said depositors are not known to the president or managing officer of said bank to be now living, and the Attorney General of said state has been informed of the foregoing facts.

And for a twenty-third cause of action the plaintiff alleges:

I.

That Security Savings Bank is, and at all times herein mentioned was, a corporation doing a banking business in the State of California.

25

II.

That more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Christian Torjesen, as a depositor therein, the sum of one hundred forty-five and 71/100 dollars (145.71); that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon; that said money and account so deposited and all accruing interest thereon has remained unclaimed for more than twenty years after the same was so deposited and after the withdrawal of any part of the principal or interest, and now is unclaimed, and neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence, and said depositor is not known to the president or managing officer of said bank to be now living, and the Attorney General of said state has been informed of the foregoing facts.

And for a twenty-fourth cause of action the plaintiff alleges:

I.

That Security Savings Bank is, and at all times herein mentioned was, a corporation doing a banking business in the State of California.

26 II.

Plaintiff hereby refers to each of the various paragraphs designated as paragraph II of each of the foregoing causes of action herein numbered from one to twenty-three, inclusive, and by reference thereto hereby adopts said paragraphs and each and all of them as a part of this cause of action, the same as if they were set out in full herein.

III.

That more than twenty years prior to the institution of this action there was deposited with said bank to the credit of the various parties named in the foregoing causes of action herein the sums particularly set forth in said causes of action; that for more than twenty years prior to the institution of this action none of said depositors have made any deposit to the credit of any of said accounts in said bank or withdrawn any part thereof, or the, or any interest accruing thereon; that said moneys and accounts so deposited and all accruing interest thereon have remained unclaimed for more than twenty years after the same were so deposited and after the withdrawal of any part of the principal or interest, and said moneys and accounts, and each and all of them, now are unclaimed; and none of said depositors and no claimant of any of said deposits or accounts, or the interest thereon, has filed any notice with such bank showing
27 the present residence of any of such depositors and none of said depositors are known to the president or managing officer of said bank to be now living, and the Attorney General of said state has been informed of the foregoing facts.

Wherefore plaintiff prays that, after a hearing had herein, it be determined by said Superior Court that all moneys so deposited in said bank as aforesaid are and have been unclaimed as hereinbefore stated; and that the court render judgment in favor of plaintiff declaring that said moneys, together with the increase and proceeds thereof, up to the time of judgment, have escheated to the state and commanding said bank to forthwith deposit with the State Treasurer all such moneys so deposited, together with said increase and proceeds, and for such other and further relief as may be meet in the premises.

U. S. WEBB,
Attorney General of the State of California;
JOHN T. NOURSE,
Deputy Attorney General,
Attorneys for Plaintiff.

(Endorsed:) Filed Sep. 7, 1916. E. F. Pfund, Clerk, by H. W. Hall, Deputy.

28 [Title of Court and Cause.]

Affidavit of Publication of Summons and Notice to Claimants.

STATE OF CALIFORNIA,
County of Sacramento, ss:

W. H. Larkin, being first duly sworn, deposes and says: That The Sunday Leader is, and during all the times herein mentioned, and during all times continuously for more than thirty (30) years last past, was a weekly newspaper of general circulation, and during all of said times was, and now is, a newspaper published for the dissemination of local news and intelligence of a general character, and that during all of said times it has had and it now has a bona fide subscription list of paying subscribers, and that during all of said times it has been and it now is established and was and is printed at regular intervals, to wit, weekly, in the City of Sacramento, in the County of Sacramento, State of California. That affiant is and on all of the dates of the publication of the hereinafter mentioned summons and also notice to claimants, was a citizen of the United States, and a resident of the County of Sacramento, State of California, and over the age of twenty-one years; and that he is the printer and publisher of said newspaper, namely, The Sunday Leader. That the summons and also a copy of said notice
29 to claimants then and there attached to said summons and which are hereto annexed and marked exhibit A was published in The Sunday Leader, said newspaper, for four weeks as often during said period of four weeks as the said newspaper was regularly issued, to wit, on the following dates, viz., on September 17, September 24, October 1, October 8, October 15, 1916. That said exhibit A is hereby referred to and made a part of this affidavit. That said summons and also said notice to claimants thereto attached as so published, was set in nonpareil type, and that the words preceding said summons and the words of the title preceding said notice to claimants as so published, and which words appear in said exhibit A were printed in black face nonpareil type; and that said exhibit A is an exact copy of the said summons and the said notice to claimants as the same appeared and was published in said newspaper as aforesaid.

W. H. LARKIN.

Subscribed and sworn to before me this 20th day of December, 1916.

[SEAL.] P. H. JOHNSON,
Notary Public in and for the County of Sacramento, State of California.

(Endorsed:) Filed December 23, 1916. E. F. Pfund, Clerk, by A. Greilich, Deputy.

30 EXHIBIT A.

[Annexed to Foregoing Affidavit.]

[Title of Court and Cause.]

Summons.

Action Brought in the Superior Court of the County of Sacramento, State of California, and the Complaint Filed in said County of Sacramento, in the Office of the Clerk of said Superior Court.

The People of the State of California send Greeting to Security Savings Bank, a Corporation; Valdemar Anderson, J. W. Canfield, Anne C. Carrell, Christina Cooke, E. P. Cressy, Evan Edmunds, Josephine Farnfield, Marie Fortayon, Henry Hales, Anaise Hill, J. W. Livsey, Leonard Mager, James Millar, Joseph A. Miller, G. B. Mudge, Wm. Nixon, Martin O'Dea, John H. Prime, Eva A. Reynolds, Mrs. M. M. D. Robinson, Kate G. Schultze, A. E. and A. C. Stoddart and Christian Torjesen, Defendants:

You are hereby notified that an action was brought agianst you by the above named plaintiff in the Superior Court of the County of Sacramento, State of California, by filing a complaint in the office of the clerk of said court on the 7th day of September, 1916, in which action State of California is plaintiff and you are defendants.

You are hereby directed to appear and answer said complaint within ten days from the service of the summons, exclusive
31 of the day of service, if served on you in said County of Sacramento, and within thirty days, exclusive of the day of service, if served elsewhere; and you are further notified that unless you so appear and answer within the time specified the plaintiff will take judgment for any money, or damages demanded in the complaint as arising upon contract, or will apply to the court for any other relief demanded in the complaint, to wit, will apply to the court for judgment adjudging and decreeing that all moneys mentioned and described in said complaint so deposited in said Security Savings Bank, a corporation, mentioned and described in said complaint as aforesaid are and have been unclaimed as alleged in said complaint and that the said judgment adjudge and decree that all of said moneys mentioned and described and as alleged in said complaint together with the increase and proceeds thereof up to the time of said judgment have escheated to the State of California, plaintiff, and ordering, adjudging and commanding said bank, defendant, mentioned and described in said complaint to forthwith deposit with the State Treasurer of the State of California all such moneys so deposited in said bank together with said increase and proceeds and for such other relief as is demanded in said complaint.

Given under my hand and the seal of the Superior Court
32 of the County of Sacramento, State of California, this 7th day of September, A. D. 1916.

[SEAL.]

E. F. PFUND,
Clerk,
By H. W. HALL,
Deputy Clerk.

U. S. WEBB,
Attorney General of the State of California;
JOHN T. NOURSE,
Deputy Attorney General,
Attorneys for Plaintiff.
se10-5t.

[Title of Court and Cause.]

Notice to Claimants.

Notice is hereby given to all persons, other than those named in the summons and complaint in the above entitled action, claiming any interest in any deposit mentioned in said complaint, that they and each and all of them are hereby required to appear within sixty days after the first publication of the summons in this action, and show cause, if any they have, why the moneys involved in said action should not be deposited with the State Treasurer as provided in section 1273 of the Code of Civil Procedure of the State of California, and if such appearance and showing is not made the
33 plaintiff herein the State of California, will apply to the court for the relief demanded in the complaint.

[SEAL.]

E. F. PFUND,
County Clerk of Sacramento County,
By H. W. HALL,
Deputy.

The first publication of this notice and of said summons was on the 17th day of September, 1916.
se10-5t.

[Title of Court and Cause.]

Demurrer.

Comes now Security Savings Bank, a corporation, one of the defendants above named, and demurs to plaintiff's complaint on file herein and for cause of demurrer alleges:

I.

That said complaint does not state facts sufficient to constitute a cause of action.

II.

That said complaint does not state facts sufficient to constitute a cause of action against this defendant.

III.

That the first alleged count or cause of action of said complaint does not state facts sufficient to constitute a cause of action.

34

IV.

That the first alleged count or cause of action of said complaint does not state facts sufficient to constitute a cause of action against this defendant.

Said defendant further demurs severally to each and every of the other alleged counts or causes of action of said complaint numbered from two to twenty-four inclusive, and for cause of demurrer to each of said alleged counts or causes of actions avers:

(1) That said count or cause of action does not state facts sufficient to constitute a cause of action.

(2) That said count or cause of action does not state facts sufficient to constitute a cause of action against this defendant.

Wherefore said defendant prays that plaintiff take nothing by its said complaint and that said defendant be hence dismissed with its costs herein incurred.

McCUTCHEN, OLNEY & WILLARD,
Attorneys for Defendant, Security Savings Bank.

We hereby certify that the foregoing demurrer is in our opinion, well founded in point of law and that the same is not imposed for delay.

McCUTCHEN, OLNEY & WILLARD.

35 (Endorsed:) July 19, 1917. E. F. Pfund, Clerk, by H. W. Hall, Deputy.

[Title of Court and Cause.]

Minute Order Overruling Demurrer to Complaint.

Monday, October 1, 1917.

Court met pursuant to law, Honorable Peter J. Shields, judge Superior Court presiding.

The demurrer of the defendant, Security Savings Bank to the complaint in the above entitled cause came on regularly this day for hearing, with Deputy Attorney General John T. Nourse appearing in court as counsel for the plaintiff, and Charles W. Willard, Esq., appearing in court as counsel for the defendant, Security Savings Bank. Whereupon said demurrer was argued by the respective counsel and submitted to the court for its decision, and the court being fully advised orders that said demurrer be. and the same is, hereby overruled, and that said defendant is allowed thirty days within which to answer.

[Entered in the minutes of department No. 2 in volume 45, page 71.]

36 [Title of Court and Cause.]

Answer of Defendant Security Savings Bank.

Comes now one of the defendants above named, Security Savings Bank, a corporation, and answering plaintiff's complaint on file herein admits, denies and alleges as follows:

Admits that more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Valdemar Anderson as a depositor therein the sum of $7.55/100; admits that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon. Denies that said money and/or account so deposited and/or all, or any, accruing interest thereon has remained unclaimed for more than twenty years, or for any other time, or at all, after the same was so deposited and/or after the withdrawal of any part of the principal or interest, or now is unclaimed; and in this behalf said defendant alleges that said money and account and all accruing interest thereon has at all times since the date of its deposit been claimed by said Valdemar Anderson; admits that neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence.

37 Denies that said depositor is not known to the president or managing officer of said bank to be now living, in so far as said allegation implies that said defendant has any knowledge that said depositor is now dead, and in this behalf said defendant alleges that it has no knowledge as to whether said depositor is now living or dead.

Answering the allegations contained in the second alleged cause of action set forth in said complaint, said defendant admits, denies and alleges as follows:

Admits that more than twenty years prior to the institution of this action there was deposited with said bank to the credit of J. W. Canfield as a depositor therein the sum of $15; admits that for more than twenty years prior to the institution of this action said depositor

has not made a deposit to the credit of said account in said bank, or withdrawn any part thereof, or the, or any, interest accruing thereon. Denies that said money and/or account so deposited and/or all or any accruing interest thereon has remained unclaimed for more than twenty years, or for any other time, or at all, after the same was so deposited, and/or after the withdrawal of any part of the principal or interest, or now is unclaimed; and in this behalf said defendant alleges that said money and account and all accruing interest thereon has at all times since the date of its deposit
38 been claimed by said J. W. Canfield, or by his surviving wife, Nettie Doe Canfield.

And for a further, separate and affirmative defense to said second alleged cause of action, said defendant alleges that on or about the 14th day of March, 1917, said defendant received from Nettie Doe Canfield an affidavit, drawn in accordance with the provisions of section 1454 of the Code of Civil Procedure of the State of California, stating that said J. W. Canfield was dead and that said affiant, Nettie Doe Canfield, was the surviving wife of said decedent, and that the whole amount that said decedent left on deposit in any and all banks of deposit in this state did not exceed the sum of one thousand dollars, and said defendant thereupon paid to said affiant, Nettie Doe Canfield, the said deposit of $15, together with the accruing interest thereon amounting in all to the sum of $49.06, and received the receipt of said affiant therefor.

Answering the allegations contained in the third alleged cause of action set forth in said complaint, said defendant admits, denies and alleges as follows:

Admits that more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Anne C. Carrell as a depositor therein the sum of $1.61; admits that for more than twenty years prior to the institution of this action
39 said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon. Denies that said money and/or account so deposited and/or all, or any, accruing interest thereon has remained unclaimed for more than twenty years, or for any other time, or at all, after the same was so deposited and/or after the withdrawal of any part of the principal or interest, or now is unclaimed; and in this behalf said defendant alleges that said money and account and all accruing interest thereon has at all times since the date of its deposit been claimed by said Anne C. Carrell; admits that neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing her present residence. Denies that said depositor is not known to the president or managing officer of said bank to be now living, in so far as said allegation implies that said defendant has any knowledge that said depositor is now dead, and in this behalf said defendant alleges that it has no knowledge as to whether said depositor is now living or dead.

Answering the allegations contained in the fourth alleged cause

of action set forth in said complaint, said defendant admits, denies and alleges as follows:

Admits that more than twenty years prior to the institu-
40 tion of this action there was deposited with said bank to the credit of Christina Cooke, as a depositor therein, the sum of $2,518. Alleges that at the time of making the said deposit the said Christina Cooke left in the possession of the said bank the pass-book which the said bank had issued to her as depositor, and that ever since said time the said pass-book has been in the possession of the said bank and the said bank has entered in the said pass-book all dividends declared on the said account as and when the same were declared, to wit, semi-annually, during the entire period during which the said account has been so deposited with said bank. That to the extent to which said entry of dividends, under the said circumstances, in the said pass-book by the said bank may in law constitute additional deposits of money with the said bank, said defendant denies that for more than twenty years prior to the institution of this action, or for any other period of more than half a year in duration, said depositor has not made a deposit to the credit of said account in said bank; but saving and excepting as such entry of said dividends, under the said circumstances, in the said pass-book by the said bank may in law constitute additional deposits of money with said bank, said defendant admits that for more than twenty years prior to the institution of this action said depos-
itor has not made a deposit to the credit of said account in
41 said bank or withdrawn any part thereof. Denies that said money or account so deposited and/or all or any accruing interest thereon has remained unclaimed for more than twenty years, or for any other time or at all, after the same was so deposited, and/or after the withdrawal of any part of the principal or interest, or now is unclaimed. Admits that neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing her present residence. Denies that said depositor is not known to the president or managing officer of said bank to be now living, in so far as said allegation implies that said defendant has any knowledge that said depositor is now dead, and in this behalf said defendant alleges that it has no knowledge as to whether said depositor is now living or dead.

Answering the allegations contained in the fifth alleged cause of action set forth in said complaint, said defendant admits, denies and alleges as follows:

Admits that more than twenty years prior to the institution of this action there was deposited with said bank to the credit of E. P. Cressy as a depositor therein the sum of $5; admits that for more than twenty years prior to the institution of this action said depos-
itor has not made a deposit to the credit of said account in said
bank or withdrawn any part thereof, or the, or any, interest
42 accruing thereon. Denies that said money and/or account so deposited and/or all, or any, accruing interest thereon

has remained unclaimed for more than twenty years, or for any other time, or at all, after the same was so deposited, and/or after the withdrawal of any part of the principal or interest, or now is unclaimed; and in this behalf said defendant alleges that said money and account and all accruing interest thereon has at all times since the date of its deposit been claimed by said E. P. Cressy; admits that neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence. Denies that said depositor is not known to the president or managing officer of said bank to be now living, in so far as said allegation implies that said defendant has any knowledge that said depositor is now dead, and in this behalf said defendant alleges that it has no knowledge as to whether said depositor is now living or dead.

Answering the allegations contained in the sixth alleged cause of action set forth in said complaint, said defendant admits, denies and alleges as follows:

Admits that more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Evan Edmunds as a depositor therein the sum of $39.86; admits
43 that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon. Denies that said money and/or accounts so deposits and/or all, or any, accruing interest thereon has remained unclaimed for more than twenty years, or for any other time, or at all, after the same was so deposited and/or after the withdrawal of any part of the principal or interest, or now is unclaimed; and in this behalf said defendant alleges that said money and account and all accruing interest thereon has at all times since the date of its deposit been claimed by said Evan Edmunds; admits that neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence. Denies that said depositor is not known to the president or managing officer of said bank to be now living, in so far as said allegation implies that said defendant has any knowledge that said depositor is now dead, and in this behalf said defendant alleges that it has no knowledge as to whether said depositor is now living or dead.

Answering the allegations contained in the seventh alleged cause of action set forth in said complaint, said defendant admits, denies and alleges as follows:

44 Admits that more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Josephine Farnfield as a depositor therein the sum of $2.72; admits that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the,

or any, interest accruing thereon. Denies that said money and/or account so deposited and/or all, or any, accruing interest thereon has remained unclaimed for more than twenty years, or for any other time, or at all, after the same was so deposited and/or after the withdrawal of any part of the principal or interest or now is unclaimed; and in this behalf said defendant alleges that said money and account and all accruing interest thereon has at all times since the date of its deposit been claimed by said Josephine Farnfield; admits that neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing her present residence. Denies that said depositor is not known to the president or managing officer of said bank to be now living, in so far as said allegation implies that said defendant has any knowledge that said depositor is now dead, and in this behalf said defendant alleges that it has no knowledge as to whether said depositor is now living or dead.

45 Answering the allegations contained in the eighth alleged cause of action set forth in said complaint, said defendant admits, denies and alleges as follows:

Admits that more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Marie Fortayon as a depositor therein the sum of $5.14; admits that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon. Denies that said money and/or account so deposited and/or all, or any, accruing interest thereon has remained unclaimed for more than twenty years, or for any other time, or at all, after the same was so deposited and/or after the withdrawal of any part of the principal or interest, or now is unclaimed; and in this behalf said defendant alleges that said money and account and all accruing interest thereon has at all times since the date of its deposit been claimed by said Marie Fortayon; admits that neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing her present residence. Denies that said depositor is not known to the president or managing officer of said bank to be now living, in so far as said allegation implies that said defendant has any knowledge that said depositor is now
46 dead, and in this behalf said defendant alleges that it has no knowledge as to whether said depositor is now living or dead.

Answering the allegations contained in the ninth alleged cause of action set forth in said complaint, said defendant admits, denies and alleges as follows:

Admits that more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Henry Hales as a depositor therein the sum of $1.03; admits that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or

withdrawn any part thereof, or the, or any, interest accruing thereon. Denies that said money and/or account so deposited and/or all, or any, accruing interest thereon has remained unclaimed for more than twenty years, or for any other time, or at all, after the same was so deposited and/or after the withdrawal of any part of the principal or interest, or now is unclaimed; and in this behalf said defendant alleges that said money and account and all accruing interest thereon has at all times since the date of its deposit been claimed by said Henry Hales; admits that neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence. Denies that said depositor is not known to the president or managing officer
47 of said bank to be now living, in so far as said allegation implies that said defendant has any knowledge that said depositor is now dead, and in this behalf said defendant alleges that it has no knowledge as to whether said depositor is now living or dead.

Answering the allegations contained in the tenth alleged cause of action set forth in said complaint, said defendant admits, denies and alleges as follows:

Admits that more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Anaise Hill as a depositor therein the sum of $40; admits that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon. Denies that said money and/or account so deposited and/or all, or any, accruing interest thereon has remained unclaimed for more than twenty years, or for any other time, or at all, after the same was so deposited and/or after the withdrawal of any part of the principal or interest, or now is unclaimed; and in this behalf said defendant alleges that said money and account and all accruing interest thereon has at all times since the date of its deposit been claimed by said Anaise Hill; admits that neither said depositor nor any claimant of said deposit or the interest thereon has filed
48 any notice with such bank showing his present residence. Denies that said depositor is not known to the president or managing officer of said bank to be now living, in so far as said allegation implies that said defendant has any knowledge that said depositor is now dead, and in this behalf said defendant alleges that it has no knowledge as to whether said depositor is now living or dead.

Answering the allegations contained in the eleventh alleged cause of action set forth in said complaint, said defendant admits, denies and alleges as follows:

Admits that more than twenty years prior to the institution of this action there was deposited with said bank to the credit of J. W. Livsey, as a depositor therein, the sum of $1.47. Alleges that at

the time of making the said deposit the said J. W. Livsey left in the possession of the said bank the pass-book which the said bank had issued to her as depositor, and that ever since said time the said pass-book has been in the possession of the said bank and the said bank has entered in the said pass-book all dividends declared on the said account as and when the same were declared, to wit, semi-annually, during the entire period during which the said account has been so deposited with said bank. That to the extent to which said entry of dividends, under the said circumstances, in the said pass-book by the said bank may in law constitute additional deposits of
49 money with the said bank, said defendant denies that for more than twenty years prior to the institution of this action, or for any other period of more than half a year in duration, said depositor has not made a deposit to the credit of said account in said bank; but saving and excepting as such entry of said dividends, under the said circumstances, in the said pass-book by the said bank in law may constitute additional deposits of money with said bank, said defendant admits that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof. Denies that said money or account so deposited and/or all or any accruing interest thereon has remained unclaimed for more than twenty years, or for any other time or at all, after the same was so deposited, and/or after the withdrawal of any part of the principal or interest, or now is unclaimed. Admits that neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence. Denies that said depositor is not known to the president or managing officer of said bank to be now living, in so far as said allegation implies that said defendant has any knowledge that said depositor is now dead, and in this behalf said defendant alleges that it has no knowl-
50 edge as to whether said depositor is now living or dead.

Answering the allegations contained in the twelfth alleged cause of action set forth in said complaint, said defendant admits, denies and alleges as follows:

Admits that more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Leonard Mager as depositor therein the sum of $105; admits that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon. Denies that said money and/or account so deposited and/or all, or any, accruing interest thereon has remained unclaimed for more than twenty years, or for any other time, or at all, after the same was so deposited and/or after the withdrawal of any part of the principal or interest, or now is unclaimed; and in this behalf said defendant alleges that said money and account and all accruing interest thereon has at all times since the date of its deposit been claimed by said Leonard Mager; admits that neither said depositor

nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence. Denies that said depositor is not known to the president or managing
51 officer of said bank to be now living, in so far as said allegation implies that said defendant has any knowledge that said depositor is now dead, and in this behalf said defendant alleges that it has no knowledge as to whether said depositor is now living or dead.

Answering the allegations contained in the thirteenth alleged cause of action set forth in said complaint, said defendant admits, denies and alleges as follows:

Admits that more than twenty years prior to the institution of this action there was deposited with said bank to the credit of James Millar as a depositor therein the sum of $2.98; admits that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon. Denies that said money and/or account so deposited and/or all, or any, accruing interest thereon has remained unclaimed for more than twenty years, or for any other time, or at all, after the same was so deposited and/or after the withdrawal of any part of the principal or interest, or now is unclaimed; and in this behalf said defendant alleges that said money and account and all accruing interest thereon has at all times since the date of its deposit been claimed by said James Millar; admits that neither said de-
52 positor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence. Denies that said depositor is not known to the president or managing officer of said bank to be now living, in so far as said allegation implies that said defendant has any knowledge that said depositor is now dead, and in this behalf said defendant alleges that it has no knowledge as to whether said depositor is now living or dead.

Answering the allegations contained in the fourteenth alleged cause of action set forth in said complaint, said defendant admits, denies and alleges as follows:

Admits that more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Joseph A. Miller, as a depositor therein, the sum of $5.28. Alleges that at the time of making the said deposit the said Joseph A. Miller left in the possession of the said bank the pass-book which the said bank had issued to him as depositor, and that ever since said time the said pass-book has been in the possession of the said bank and the said bank has entered in the said pass-book all dividends declared on the said account as and when the same were declared, to wit: semi-annually, during the entire period during which the said account has been so deposited with said bank. That to the extent to which said entry of dividends, under the said circumstances,

in the said pass-book by the said bank may in law con-
53 stitute additional deposits of money with the said bank, said defendant denies that for more than twenty years prior to the institution of this action, or for any other period of more than half a year in duration, said depositor has not made a deposit to the credit of said account in said bank; but saving and excepting as such entry of said dividends, under the said circumstances, in the said pass-book by the said bank may in law constitute additional deposits of money with said bank, said defendant admits that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof. Denies that said money or account so deposited and/or all or any accruing interest thereon has remained unclaimed for more than twenty years, or for any other time or at all, after the same was so deposited and/or after the withdrawal of any part of the principal or interest, or now is unclaimed. Admits that neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence. Denies that said depositor is not known to the president or managing officer of said bank to be now living, in so far as said allegation implies that said defendant has any knowledge that said depositor is now dead, and in this behalf
54 said defendant alleges that it has no knowledge as to whether said depositor is now living or dead.

Answering the allegations contained in the fifteenth alleged cause of action set forth in said complaint, said defendant admits, denies and alleges as follows:

Admits that more than twenty years prior to the institution of this action there was deposited with said bank to the credit of G. B. Mudge as a depositor therein the sum of $1.00; admits that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon. Denies that said money and/or account so deposited and/or all, or any, accruing interest thereon, has remained unclaimed for more than twenty years, or for any other time, or at all, after the same was so deposited and/or after the withdrawal of any part of the principal or interest, or now is unclaimed; and in this behalf said defendant alleges that said money and account and all accruing interest thereon has at all times since the date of its deposit been claimed by said G. B. Mudge; admits that neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence. Denies that said depositor is not known to the president or
55 managing officer of said bank to be now living, in so far as said allegation implies that said defendant has any knowledge that said depositor is now dead, and in this behalf said defendant alleges that it has no knowledge as to whether said depositor is now living or dead.

Answering the allegations contained in the sixteenth alleged cause of action set forth in said complaint, said defendant admits, denies and alleges as follows:

Admits that more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Wm. Nixon, as a depositor therein, the sum of $4.55. Alleges that at the time of making the said deposit the said Wm. Nixon left in the possession of the said bank the pass-book which the said bank had issued to him as depositor, and that ever since said time the said pass-book has been in the possession of the said bank and the said bank has entered in the said pass-book all dividends declared on the said account as and when the same were declared, to wit: semi-annually, during the entire period during which the said account has been so deposited with said bank. That to the extent to which said entry of dividends, under the said circumstances, in said pass-book by the said bank may in law constitute additional deposits of money with the said bank, said defendant denies that for
56 more than twenty years prior to the institution of this action, or for any other period of more than half a year in duration, said depositor has not made a deposit to the credit of said account in said bank; but saving and excepting as such entry of said dividends, under the said circumstances, in the said pass-book by the said bank may in law constitute additional deposits of money with said bank, said defendant admits that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof. Denies that said money or account so deposited and/or all or any accruing interest thereon has remained unclaimed for more than twenty years, or for any other time or at all, after the same was so deposited and/or after the withdrawal of any part of the principal or interest, or now is unclaimed. Admits that neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence. Denies that said depositor is not known to the president or managing officer of said bank to be now living, in so far as said allegation implies that said defendant has any knowledge that said depositor is now dead, and in this behalf said defendant alleges that it has no knowledge as to whether said depositor is now living or dead.

57 Answering the allegations contained in the seventeenth alleged cause of action set forth in said complaint, said defendant admits, denies and alleges as follows:

Admits that more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Martin O'Dea as a depositor therein the sum of $10.00; admits that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon. Denies that said money and/or account so deposited and/or all, or any, accruing interest thereon has remained unclaimed for more

than twenty years, or for any other time, or at all, after the same was so deposited and/or after the withdrawal of any part of the principal or interest, or now is unclaimed; and in this behalf said defendant alleges that said money and account and all accruing interest thereon has at all times since the date of its deposit been claimed by said Martin O'Dea; admits that neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence. Denies that said depositor is not known to the president or managing officer of said bank to be now living, in so far as said allegation implies
58 that said defendant has any knowledge that said depositor is now dead, and in this behalf said defendant alleges that it has no knowledge as to whether said depositor is now living or dead.

Answering the allegations contained in the eighteenth alleged cause of action set forth in said complaint, said defendant admits, denies and alleges as follows:

Admits that more than twenty years prior to the institution of this action there was deposited with said bank to the credit of John H. Prime, as a depositor therein, the sum of $47.24. Alleges that at the time of making the said deposit the said John H. Prime left in the possession of the said bank the pass-book which the said bank had issued to him as depositor, and that ever since said time the said pass-book has been in the possession of the said bank and the said bank has entered in the said pass-book all dividends declared on the said account as and when the same were declared, to wit: semi-annually, during the entire period during which the said account has been so deposited with said bank. That to the extent to which said entry of dividends, under the said circumstances, in the said pass-book by the said bank may in law constitute additional deposits of money with the said bank, said defendant denies that for more than twenty years prior to the institution of this action, or for any other period of more than half a year in duration, said de-
59 positor has not made a deposit to the credit of said account in said bank; but saving and excepting as such entry of said dividends, under the said circumstances, in the said pass-book by the said bank may in law constitute additional deposits of money with said bank, said defendant admits that for more than twenty years prior to the institution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof. Denies that said money or account so deposited and/or all or any accruing interest thereon has remained unclaimed for more than twenty years, or for any other time or at all, after the same was so deposited and/or after the withdrawal of any part of the principal or interest, or now is unclaimed. Admits that neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing his present residence. Denies that said depositor is not known to the president or managing officer of said bank to be now living, in so far as said allegation implies that said defendant has any knowledge that said depositor is now dead, and in this behalf said defendant

alleges that it has no knowledge as to whether said depositor is now living or dead.

Answering the allegations contained in the nineteenth alleged cause of action set forth in said complaint, said defendant admits, denies and alleges as follows:

60 Admits that more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Eva A. Reynolds, as a depositor therein, the sum of $6.55. Alleges that at the time of making the said deposit the said Eva A. Reynolds left in the possession of the said bank the pass-book which the said bank had issued to her as depositor, and that ever since said time the said pass-book has been in the possession of the said bank and the said bank has entered in the said pass-book all dividends declared on the said account as and when the same were declared, to wit: semi-annually, during the entire period during which the said account has been so deposited with said bank. That to the extent to which said entry of dividends, under the said circumstances, in the said pass-book by the said bank may in law constitute additional deposits of money with the said bank, said defendant denies that for more than twenty years prior to the institution of this action, or for any other period of more than half a year in duration, said depositor has not made a deposit to the credit of said account in said bank; but saving and excepting as such entry of said dividends, under the said circumstances, in the said pass-book by the said bank may in law constitute additional deposits of money with said bank, said defendant admits that for more than twenty years prior to the institution of this action said depositor has

61 not made a deposit to the credit of said account in said bank or withdrawn any part thereof. Denies that said money or account so deposited and/or all or any accruing interest thereon has remained unclaimed for more than twenty years, or for any other time or at all, after the same was so deposited and/or after the withdrawal of any part of the principal or interest, or now is unclaimed. Admits that neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing her present residence. Denies that said depositor is now known to the president or managing officer of said bank to be now living, in so far as said allegation implies that said defendant has any knowledge that said depositor is now dead, and in this behalf said defendant alleges that it has no knowledge as to whether said depositor is now living or dead.

Answering the allegation contained in the twentieth alleged cause of action set forth in said complaint, said defendant admits, denies and alleges as follows:

Admits that more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Mrs. M. M. D. Robinson, as a depositor therein, the sum of $4.25; admits that for more than twenty years prior to the institution of this action

said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any,
62 interest accruing thereon. Denies that said money and/or account so deposited and/or all, or any, accruing interest thereon has remained unclaimed for more than twenty years, or for any other time, or at all, after the same was so deposited and/or after the withdrawal of any part of the principal or interest, or now is unclaimed; and in this behalf said defendant alleges that said money and account and all accruing interest thereon has at all times since the date of its deposit been claimed by said Mrs. M. M. D. Robinson; admits that neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing here present residence. Denies that said depositor is not known to the president or managing officer of said bank to be now living, in so far as said allegation implies that said defendant has any knowledge that said depositor is now dead, and in this behalf said defendant alleges that it has no knowledge as to whether said depositor is now living or dead.

Answering the allegations contained in the twenty-first alleged cause of action set forth in said complaint, said defendant admits, denies and alleges as follows:

Admits that more than twenty years prior to the institution of this action there was deposited with said bank to the credit
63 of Kate G. Schultze, as a depositor therein, the sum of $3.03; admits that for more than twenty years prior to the intsitution of this action said depositor has not made a deposit to the credit of said account in said bank or withdrawn any part thereof, or the, or any, interest accruing thereon. Denies that said money and/or account so deposited and/or all, or any, accruing interest thereon has remained unclaimed for more than twenty years, or for any other time, or at all, after the same was so deposited and/or after the withdrawal of any part of the principal or interest, or now is unclaimed; and in this behalf said defendant alleges that said money and account and all accruing interest thereon has at all times since the date of its deposit been claimed by said Kate G. Schultze; admits that neither said depositor nor any claimant of said deposit or the interest thereon has filed any notice with such bank showing her present residence. Denies that said depositor is not known to the president or managing officer of said bank to be now living, in so far as said allegation implies that said defendant has any knowledge that said depositor is now dead, and in this behalf said defendant alleges that it has no knowledge as to whether said depositor is now living or dead.

Answering the allegations contained in the twenty-second alleged cause of action set forth in said complaint, said defendant admits, denies and alleges as follows:

64 Admits that more than twenty years prior to the institution of this action there was deposited with said bank to the

credit of A. E. and A. C. Stoddart, jointly, as joint depositors therein, the sum of $1.20. Alleges that at the time of making the said deposit the said A. E. and A. C. Stoddart left in the possession of the said bank the pass-book which the said bank had issued to them as depositors, and that ever since said time the said pass-book has been in the possession of the said bank and the said bank has entered in the said pass-book all dividends declared on the said account as and when the same were declared, to wit: semiannually, during the entire period during which the said account has been so deposited with said bank. That to the extent to which said entry of dividends, under the said circumstances, in the said pass-book by the said bank may in law constitute additional deposits of money with the said bank, said defendant denies that for more than twenty years prior to the institution of this action, or for any other period of more than half a year in duration, said depositors have not made a deposit to the credit of said account in said bank; but saving and excepting as such entry of said dividends, under the said circumstances, in the said pass-book by the said bank may in law constitute additional deposits of money with said bank, said defendant admits that for more than twenty years prior to the institution of this action said depositors have not made a deposit to the credit of said
65 account in said bank or withdrawn any part thereof. Denies that said money or account so deposited and/or all or any accruing interest thereon has remained unclaimed for more than twenty years, or for any other time or at all, after the same was so deposited and/or after the withdrawal of any part of the principal or interest, or now is unclaimed. Admits that neither said depositors nor any claimant of said deposit or the interest thereon have filed any notice with such bank showing their present residence. Denies that said depositors are not known to the president or managing officer of said bank to be now living, insofar as said allegation implies that said defendant has any knowledge that said depositors are now dead, and in this behalf said defendant alleges that it has no knowledge as to whether said depositors are now living or dead.

Answering the allegations contained in the twenty-third alleged cause of action set forth in said complaint, said defendant admits, denies and alleges as follows:

Admits that more than twenty years prior to the institution of this action there was deposited with said bank to the credit of Christian Torjesen, as a depositor therein, the sum of $145.71; admits that for more than twenty years prior to the institution of this action said depositor had not made a deposit to the credit of said account in said bank or withdrawn any part thereof or the, or any,
66 interest accruing thereon; denies that said money and/or account so deposited and/or all or any accruing interest thereon has remained unclaimed for more than twenty years, or for any other time, or at all, after the same was so deposited and/or after the withdrawal of any part of the principal or interest, or is now unclaimed; and in this behalf said defendant alleges that said money

and account and all accruing interest thereon has at all times after the same was so deposited been claimed by said Christian Torjesen, or by Andreas Bjolstad, as administrator of the estate of Christian Torjesen, deceased, and by certain persons claiming to be his surviving heirs-at-law as said persons are named in the cross-complaint of Andreas Bjolstad, as administrator of the estate of Christian Torjesen, deceased, et al., on file herein. Denies that neither said depositor, nor any claimant of said deposit or the interest thereon, has filed any notice with such bank showing his present residence; and in this behalf said defendant alleges that subsequently to the commencement of this action certain persons claiming to be the heirs-at-law of the said Christian Torjesen, as named in said cross-complaint, have filed with said defendant a notice showing their present residence.

Answering the alleged twenty-fourth cause of action set forth in said complaint, said defendant hereby refers to, repeats and
67 incorporates herein as and for its answer to said twenty-fourth alleged cause of action each and every, all and singular, its answers, hereinbefore set forth, to said alleged causes of action numbered from one to twenty-three, inclusive.

And for a further, separate and affirmative defense to each and all of said alleged causes of action set forth in said complaint, said defendant alleges that this action has been instituted pursuant to the provisions of section 15 of the Bank Act and section 1273 of the Code of Civil Procedure of the State of California and that there is no other law of this state which purports to authorize such an action; that the provisions of said section 15 of the Bank Act and said section 1273 of the Code of Civil Procedure are unconstitutional, null and void, and repugnant to and in violation of section 10 of article I of the Constitution of the United States; and are also repugnant to and in violation of the provisions of section 1 of article XIV of the amendments to the Constitution of the United States; and impair the obligation of the contracts between said defendant and its depositors against the prohibition of said section 10 of said article I of the said Constitution and deprive said defendant of property without due process of law, in violation of the provisions of section 1 of article XIV of the amendments to the said Constitution, and deny to said defendant the equal protection of the laws
68 in violation of the provisions of said section 1 of article XIV of the amendments to the said Constitution. That the said section 15 of the Bank Act and said section 1273 of the Code of Civil Procedure, and the provisions thereof, are also repugnant to and in violation of the provisions of section 13 of article I of the Constitution of the State of California, and are repugnant to and in violation of the provisions of section 14 of article I of the Constitution of the State of California, and are repugnant to and in violation of the provisions of section 16 of article I of the Constitution of the State of California, and deprive said defendant of property without

due process of law, in violation of the provisions of said section 13 of article I of said Constitution, and take the private property of said defendant for public use, without just compensation having first been made to or paid into court for the owner, in violation of the provisions of section 14 of said article I of the said Constitution, and impair the obligation of the contracts between said defendant and its depositors, in violation of the said provisions of said section 16 of said article I of the said Constitution.

Said defendant further alleges that said section 15 of the Bank Act, and the provisions thereof with reference to the issuance by the clerk, at the time of issuing the summons in the action, of a notice directed to all persons claiming any interest in any
69 deposit mentioned in the complaint, etc., are unconstitutional, null and void, and are repugnant to and in violation of section 24 of article IV of the Constitution of the State of California.

Said defendant further alleges that the provisions of section 15 of the said Bank Act, by which it is declared that any bank which shall make any deposit with the State Treasurer in conformity with the provisions of that section shall not thereafter be liable to any person for the same, are unconstitutional, null and void, repugnant to and violative of the provisions of section 10 of article I of the Constitution of the United States, and are violative of the provisions of section 1 of article XIV of the amendments to the Constitution of the United States, and impair the obligation of the contracts between said defendant and its depositors, in violation of the provisions of said section 10 of said article I of the said Constitution, and deprive the said depositors of their property without due process of law, in violation of the provisions of said section 1 of said article XIV of the said amendments to the said Constitution, and deny to the said depositors the equal protection of the laws, in violation of the provisions of said section 1 of said article XIV of the amendments to the said Constitution.

70 Said defendant further alleges that if this court should render judgment in this action declaring that said moneys, or any of them, have escheated to the state, and commanding said defendant to deposit forthwith all such moneys with the State Treasurer, this court and the State of California, acting through this court, would take the property of said defendant, to wit, the moneys so ordered to be paid to the State Treasurer, without due process of law, contrary to the provisions of section 1 of article XIV of the amendments to the Constitution of the United States, and would impair the obligations between this defendant and its depositors, contrary to the provisions of section 10 of article I of the Constitution of the United States, and would deny to this defendant the equal protection of the laws, contrary to the provisions of section 1 of article XIV of the amendments to the Constitution of the United States.

And said defendant expressly invokes, as against the provisions of the said section 15 of the said Bank Act and of said section 1273 of the Code of Civil Procedure, purporting to escheat to the state

the moneys hereinbefore described and to require them to be deposited with the State Treasurer, and against any action of this court in rendering judgment or in making any order herein declaring that said moneys have escheated to the state or commanding said defendant to make such deposit, the protection afforded
71 to the said defendant by the provisions of said section 1 of article XIV of the amendments to the Constitution of the United States.

Wherefore, said defendant prays that plaintiff take nothing by its said complaint, and that said defendant be hence dismissed with its costs of suit herein incurred.

McCUTCHEN, OLNEY & WILLARD,
Attorneys for said Defendant.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

S. L. Abbot, being first duly sworn, deposes and says:

That he is an officer, to wit, the vice-president, of Security Savings Bank, a corporation, one of the defendants herein; that he makes this verification for and on behalf of the said corporation; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters that he believes it to be true.

S. L. ABBOT.

Subscribed and sworn to before me this 20th day of December, 1917.

[SEAL.] M. I. LAWRENCE,
Notary Public in and for the City and County of San Francisco, State of California.

72 (Endorsed:) Filed Dec. 21, 1917. E. F. Pfund, Clerk. by H. W. Hall, Deputy.

[Title of Court and Cause.]

Judgment Against the Defendant Security Savings Bank, a Corporation.

This cause having come on regularly for trial before me on the thirteenth day of May, 1918, a jury having been waived by both parties, U. S. Webb, Attorney General of the State of California, represented by Frank L. Guerena, Deputy Attorney General, and Messrs. McCutchen, Olney & Willard, represented by W. W. Ferrier, Jr., Esq., appearing on behalf of the plaintiff and the defendant, Security Savings Bank, a corporation, respectively:

This action having been dismissed as against J. W. Canfield and Christian Torjesen, both defendants in the above entitled action,

upon proof by the said defendant bank that the deposits of said defendants are not and have not been "unclaimed" as alleged in the complaint of plaintiff on file herein;

Evidence having been duly adduced by the parties hereto, the cause having been submitted for decision upon the proof, upon the pleadings and the stipulation on file herein; the defendants
73 hereinafter named having failed, after due service of process and after statutory notice to claimants, to appear in this action, and their default having been, upon application of plaintiff, duly entered as provided by law;

The court being fully advised in the premises, having found that plaintiff should take judgment against the defendant, Security Savings Bank, a corporation, as prayed for in plaintiff's complaint, and findings of fact and conclusions of law having been waived by consent in writing filed with the clerk;

Now, therefore, it is hereby ordered and adjudged that the moneys on deposit with the defendant, Security Savings Bank, a corporation, to the credit of the following persons also defendants herein, and in the respective sums set forth opposite their names, are and have been unclaimed as stated and alleged in plaintiff's complaint as amended, and the said moneys are hereby declared to have escheated to the State of California, plaintiff herein, and the said defendant, Security Savings Bank, a corporation, is hereby commanded to forthwith deposit all of the said moneys, together with the increase and proceeds thereof in the respective sums hereinafter set forth opposite the names of the said defendants, with the State Treasurer of the State of California.

74 Name of defendant.	Deposit.	Increase.
Valdemar Anderson	$7.55	$19.18
Anne C. Carrell	1.61	5.01
Christina Cooke	2,518.00	5,437.05
E. P. Cressey	5.00	20.41
Evan Edmunds	39.86	50.47
Josephine Farnfield	....	2.88
Marie Fortayon	5.14	6.19
Henry Hales	1.03	14.09
Anaise Hill	40.00	200.14
J. W. Livsey	1.47	1.46
Leonard Mager	105.06	183.41
James Millar	2.98	21.03
Joseph A. Miller	5.28	49.26
G. B. Mudge	1.00	.98
William Nixon	4.55	17.53
Martin O'Dea	10.00	31.62
John H. Prime	47.25	102.91
Eva A. Reynolds	6.55	14.52
Mrs. M. M. D. Robinson	4.25	13.82
Kate G. Schultze	3.03	5.84
A. E. & A. C. Stoddart	1.20	1.56

It is further ordered that plaintiff shall have judgment against the defendant, Security Savings Bank, a corporation, for its costs of suit incurred herein.

Judgment rendered this 13th day of May, 1918.

PETER J. SHIELDS,
Judge of the Superior Court.

75 (Endorsed:) Filed May 20, 1918. F. Gregory, Clerk, by B. H. Gallup, Deputy.

Judgment roll filed May 27, 1918,
F. GREGORY,
Clerk,
By E. W. ROEDER,
Deputy.

[Title of Court and Cause.]

Notice of Appeal.

To the clerk of the above entitled court, to the plaintiff above named, and to Hon. U. S. Webb, Attorney General, and Frank L. Guerena, Deputy Attorney General, its attorneys:

You and each of you will please take notice that Security Savings Bank, a corporation, one of the defendants above named, hereby appeals to the Supreme Court of the State of California from that certain judgment, and the whole thereof, heretofore given and made by the above entitled court in the above entitled action in favor of the said plaintiff and against the said defendant, which said judgment was entered on the 27th day of May, 1918, in book 30 of judgments at page 191 in the records of the clerk of the said court.

76 McCUTCHEN, OLNEY & WILLARD,
Attorneys for Defendant Security Savings Bank.

Dated: June 6, 1918.

(Endorsed:) Filed June 10, 1918. F. Gregory, Clerk, by A. Greilich, Deputy.

[Title of Court and Cause.]

Engrossed Bill of Exceptions.

Be it remembered that this action came on regularly for trial on Monday, the 13th day of May, 1918, before the above entitled court, department No. 2 thereof, the Honorable Peter J. Shields presiding, sitting without a jury, a jury having been duly waived, U. S. Webb, Attorney General of the State of California, represented by Frank L. Guerena, Deputy Attorney General, appearing on behalf of plain-

tiff, and Messrs. McCutchen, Olney & Willard, represented by W. W. Ferrier, Jr., appearing on behalf of the defendant, Security Savings Bank, a corporation.

Thereupon the following proceedings were had:

Upon motion of plaintiff and upon written stipulation of counsel for the defendant and cross-complainant Christian Torjesen the action was dismissed as to the defendant, J. W. Canfield and as to the defendant and cross-complainant Christian Torjesen.

77 Upon motion of the plaintiff and upon proof of publication of summons and notice as provided in section 1273 of the Code of Civil Procedure of the State of California, and in section 15 of the Bank Act, the default of all of the defendants, other than the said Security Savings Bank, said J. W. Canfield, and said Christian Torjesen, for failure to appear in this action was duly entered as provided by law. It was thereupon stipulated and agreed by and between the plaintiff and the defendant, Security Savings Bank, a corporation, as follows:

That the pass-books issued by the defendant, Security Savings Bank, a corporation, to the following defendant depositors in this action, namely: Christina Cooke, J. W. Livsey, Joseph A. Miller, Wm. Nixon, John H. Prime, Eva A. Reynolds, and A. E. and A. C. Stoddart, were left in the possession of the said defendant bank when the said accounts of the said depositors were opened, and have ever since remained in the possession of the said defendant bank, and that the said bank has entered in the said pass-books all dividends declared on the said accounts, as alleged in the answer filed herein by said defendant bank; also that the possession of said pass-books has never since been demanded by the said defendant depositors; that pass-books of depositors are often left in the possession of the said bank when accounts are opened with the said

78 bank; that it is the practice of said bank to credit interest to the account of a depositor though his pass-book is not in the possession of the bank; that the said defendant bank has no knowledge as to whether the defendant depositors in this action are now living or dead; that said deposits have not been demanded of the said defendant bank by the defendant depositors and that the names of the said defendant depositors were reported by the said defendant bank to the State Controller in its annual statement as of January 1, 1916, prepared and filed pursuant to and in accordance with the provisions of section 15 of the Bank Act, as the names of depositors of the said defendant bank "known to be dead, or who have not made further deposits, nor withdrawn any money during the preceding twenty years."

The foregoing is all the evidence introduced at the trial of said action and all the proceedings had upon the trial of said action. Thereafter the said cause was argued and submitted to the court for decision, and thereafter, findings having been duly waived, the court made its decision in favor of the plaintiff and against the defendant, and judgment was entered thereon the 27th day of May, 1918.

It is hereby stipulated and agreed by and between the parties hereto that the foregoing constitutes and is the defendant's
79 Security Savings Bank, bill of exceptions on appeal from the judgment in the above entitled action and that the same is true in all respects and may be settled and allowed.

U. S. WEBB,
Attorney General;
FRANK L. GUERENA,
Deputy,
Attorneys for Plaintiff.
McCUTCHEN, OLNEY & WILLARD,
Attorneys for Defendant Security Savings Bank.

I, Peter J. Shields, judge of the above-entitled court, being the judge before whom and by whom the above-entitled action was tried, do hereby certify that the above is a true and correct bill of exceptions and that the same has been provided in due time; and it is hereby settled, approved and allowed.

Dated, Sacramento, Cal., this 10th day of September, 1918.

PETER J. SHIELDS,
Judge of said Superior Court.

(Endorsed:) Filed Sep. 10, 1918. F. Gregory, Clerk, by B. H. Gallup, Deputy.

80 *Stipulation to Transcript.*

It is hereby stipulated that the foregoing transcript on appeal is correct; that it contains full, true and correct copies of all the papers therein set forth now on file in the office of the county clerk of the County of Sacramento, State of California; that the minute orders therein contained are full, true and correct copies thereof as made and entered in the minutes of the Superior Court; that the said foregoing papers shall constitute the transcript on appeal in this cause and that the appeal may be heard and determined thereon.

U. S. WEBB,
Attorney General, State of California;
FRANK L. GUERENA,
Deputy Attorney General, State of California,
Attorneys for Respondent.
McCUTCHEN, OLNEY & WILLARD,
Attorneys for Appellant.

Dated, October —, 1918.

Clerk's Certificate to Transcript.

STATE OF CALIFORNIA,
County of Sacramento, ss:

I, F. Gregory, county clerk of the County of Sacramento, State of California, and ex-officio clerk of the Superior Court
81 in and for said county, hereby certify that I have compared the foregoing transcript with the original papers in said action, now on file in my office, and with the orders therein made and entered on the minutes of said court, and that the papers and orders therein contained are full, true and correct copies of the originals on file in this office, and of the whole thereof.

I further certify that the erasures and interlineations appearing in the foregoing transcript were made before certifying thereto.

In witness whereof I have hereunto set my hand and affixed the seal of said Superior Court this — day of October, 1918.

[SEAL.] F. GREGORY,
Clerk,

By —— ——,
Deputy Clerk.

82 Filed July 5, 1921. B. Grant Taylor, Clerk, by Erb, Deputy.

In Bank, July 5, 1921.

Sac. No. 2890.

STATE OF CALIFORNIA, Plaintiff and Respondent,

v.

SECURITY SAVINGS BANK (a Corporation) et al., Defendants; SECURITY SAVINGS BANK (a Corporation), Defendant and Appellant.

This is an action by the State of California to declare an escheat of certain bank deposits, under the provisions of section 1273 of the Code of Civil Procedure. Judgment was given for the plaintiff in the court below. The defendant bank alone appeals.

Section 1273 declares that when money is on deposit in a bank in this state and the depositor does not for a period of more than twenty years deposit any more money in the account, nor draw out any part thereof, nor claim the same, and neither the depositor nor any claimant has filed with the bank any notice of his present residence, such deposit, with the accumulations of interest thereon, shall escheat to the state.

83 The section then further provides that the attorney-general, on being informed of such deposits, "shall commence an action or actions in the name of the State of California, in the superior court of the county of Sacramento, in which shall be joined

as parties the bank or banks in which the moneys are deposited and the names of all such depositors."

With respect to process the section declares:

"Service of process in such action or actions shall be made by delivery of a copy of the complaint and summons to the president, cashier or managing officer of each defendant bank, and by publication of a copy of such summons in a newspaper of general circulation published in said county for a period of four weeks."

All or any number of banks or depositors may be included in one action. Upon the trial, if it be determined that the moneys deposited in any bank are unclaimed, as previously stated, the court must render judgment in favor of the state, declaring that said moneys have escheated to the state and directing payment thereof into the state treasury. This section was added to the code in 1915. (Stats. 1915, p. 107.) At the same session section 15 of the Bank Act was amended. (Stats. 1915, p. 1106.) It provides that moneys remaining unclaimed in a bank by a depositor who had not drawn any money therefrom or made any further deposits thereto, nor filed any notice of residence, for the period of twenty years, shall be deposited with the state treasurer, "after judgment in the manner provided in the Code of Civil Procedure." It further provides that:

"At the time of issuing the summons in the action provided for in section 1273 of the Code of Civil Procedure, the clerk shall also issue a notice signed by him, giving the title and number of said action, and referring to the complaint therein, and directed to all
84 persons, other than those named as defendants therein, claiming any interest in any deposit mentioned in said complaint, and requiring them to appear within sixty days after the first publication of such summons, and show cause, if any they have, why the moneys involved in said action should not be deposited with the state treasurer as in said section provided, and notifying them that if they do not so appear and show cause, the state will apply to the court for the relief demanded in the complaint. A copy of said notice shall be attached to and published with the copy of said summons required to be published by said section, and at the end of the copy of such notice so published there shall be a statement of the date of the first publication of said summons and notice."

This section further provides that upon the completion of the publication of the summons and notice and the service of the summons "the court shall have full and complete jurisdiction over the state and the said deposits and of the person of every one having or claiming any interest in the said deposits, or any of them, and shall have full and complete jurisdiction to hear and determine the issues therein, and render the appropriate judgment thereon."

The case presents the single question whether or not the provisions of the statute requiring process in actions of this character are valid under the fourteenth amendment of the constitution of the United States and section 13, article I, of our constitution, providing that

no person shall be deprived of his property without due process of law.

It is clear that section 15 of the Banking Act and section 1273 aforesaid, although separately enacted, relate to the same subject and are to be considered and construed as if both were contained in a single act, at least with respect to the provisions for process and notice in the action under section 1273. The provisions for notice in section 15 apply to such an action and constitute a part of the process necessary to confer jurisdiction upon the court to proceed therein.

These statutes speak of "amounts of money * * * deposited with any bank," and which "have remained unclaimed," they refer to the "money deposited" and state that such "moneys" escheat to the state, and provide for judgment, "commanding said bank to forthwith deposit all such moneys with the state treasurer." This language, if taken literally according to its legal significance, would be appropriate to describe money in the custody of the bank as bailee of its depositors. It is evident, however, from the context, and from the purpose and object to be accomplished, that it was not intended to apply exclusively to moneys held by the bank as such custodian or bailee, although possibly it might include such special deposits. It is not an accurate use of language to speak of the general deposits in an ordinary bank as the money of the depositors. When a general deposit is made with a bank, the title to the money delivered to it passes at once to the bank. The relation thereby established between the bank and the depositor is that of debtor and creditor and not that of bailee and bailor. The bank is the debtor and the depositor the creditor to the amount of the deposit. It is of some importance, in view of the argument presented, to note that the statutes in question do not provide for an actual seizure of any money, either before or after the judgment, but do provide, with respect to each depositor, for the payment to the state by the bank of the debt the bank owes to the depositor.

86 The only appellant in the case is the Security Savings Bank. None of the depositors appeared in the action and their rights cannot be here adjudicated, except so far as may be necessary in determining the rights of the bank.

The appellant claims that the law is void in all particulars because the notices provided in the action are not sufficient with respect to the depositors whose rights are to be affected thereby, and that as the judgment provided for, when given, requires the bank to pay the money due the depositors into the state treasury without their consent, it is invalid as to the bank itself, because such judgment will not protect it against the subsequent demands of the depositors in case they should appear and claim the money so deposited.

It is claimed on behalf of the state, as a preliminary objection, that the defendant bank has no interest which authorizes it to dispute the validity of the law with respect to the depositors. It is not necessary to determine whether or not it could vicariously for its depositors raise the objection that the law is invalid as to them. The bank has an interest sufficient to authorize it to challenge the validity

of the law on its own account. The deposit, as above shown, creates a contract between the bank and its depositors whereby the bank takes the money of the depositor and agrees to repay the amount thereof in whole or in part at any time on demand. Until payment is demanded by the depositor the bank may loan the money deposited with it, or a large part thereof, at interest for its own benefit. It therefore has an interest in keeping the money and the right to refuse payment on a deposit account until demand therefor is made by the depositor, or some one by him authorized, or by his successor in interest. It follows that if such demand is made
87 by another, the bank may require from such person reasonable proof of his authority. And when a third person who has not acquired the legal title to the chose in action of the depositor, but who merely claims a right to demand and receive payment of the amount deposited, sues the bank to enforce such claim, the bank has the right, for its own protection, to insist that the depositor be made a party to the action to answer as to his interest. "The person with the legal title to the demand in question should usually be made a party, as otherwise he might proceed at law notwithstanding the decree." (15 Ency. Pl. & Pr., 593; see, also, Wilson v. Castro, 31 Cal. 427.) It can not be doubted that the state is not the holder of the legal title of the depositor. That title has not been transferred to the state by any act of the depositor, and the state can not by a mere statutory declaration take away the right of the depositor and appropriate to its own use his property therein. (Const., art. I, sec. 13.) The depositor is, therefore, a necessary party to any action by the state to enforce payment of the money due on the deposits into the state treasury, and the bank has the right to insist that the depositors be brought into the case as parties by some process or notice that the law recognizes as valid. It, therefore, has the right to contend that the process and notice prescribed by these statutes do not constitute due process of law.

The claim of the bank in that behalf is that in order to make a valid service of process upon the depositors, there must be either personal service upon them, or valid constructive service; that in an action in which the judgment asked for may ultimately deprive the depositors of the title to their demands against the bank, as is the case here, the service of the process against those who reside in
88 the state and can be found therein must be a personal service upon them and each of them, and that there can be no valid concealed themselves to avoid service of process or can not with satisfaction of the court that the persons so served are not residents of the state, or are absent therefrom, or have concealed themselves to avoid service of process, or can not with due diligence be found therein. The statute does not require any showing of the facts thus claimed to be necessary to authorize a constructive service, and it does not require personal service upon any of the depositors. The record does not show that any personal service has been made on any of them or that any showing was made preliminary to the publication of the summons and notice or at all, to the effect that the depositors or any of them are non-residents or absent from the state or have

concealed themselves to avoid the service of process or can not with due diligence be found in the state. If the contention of the bank in this respect is sound the statute is contrary to the constitution, both of this state and of the United States, in failing to require due process of law on the parties whose property is to be taken, and the entire proceeding is without force or validity.

The argument of the appellant on this subject is mainly based on the proposition that the proceeding authorized by section 1273 is an action in personam and that the judgment therein to be rendered is a personal judgment against the bank and the several depositors made defendants therein. This proposition is not maintainable. The judgment does not seek to declare or enforce any obligation of the depositors or any of them to any other person or persons. Its sole object with respect to them is to act upon the obligations they respectively hold against the bank, to effect a substitution of
89 the state for the bank with respect to such obligation, and to transfer the title of that particular property of the depositors, respectively, to the state. Such proceedings are not proceedings strictly in rem; but they are proceedings quasi in rem. The proceeding is not in that respect distinguishable from an ordinary garnishee process against a debtor of a defendant to appropriate the debt to the payment of the plaintiff's demand. In such cases the defendant in the action may be a non-resident or not within reach of the process of the state court. But if service is made on the garnishee, the court has jurisdiction to dispose of that asset of the defendant and apply it to the payment of the plaintiff's debt. In Pennoyer v. Neff, 95 U. S. 727, the court said: "The law assumes that property is always in the possession of its owner, in person or by agent; and it proceeds upon the theory that its seizure will inform him, not only that it is taken into the custody of the court, but that he must look to any proceedings authorized by law upon such seizure for its condemnation and sale. Such service may also be sufficient in cases where the object of the action is to reach and dispose of property in the State, or of some interest therein, by enforcing a contract or a lien respecting the same, or to partition it among different owners, or, when the public is a party, to condemn and appropriate it for a public purpose. In other words, such service may answer in all actions which are substantially proceedings in rem." The court was there discussing the validity of attachment proceedings against one who was a non-resident of the state and had no service of process except by publication. In Cooper v. Reynolds, 77 U. S. 317, the court was considering the validity of a sale rendered upon a judgment in attachment where the only service upon the defendant was by publication. The court said: "Jurisdiction of the res is
90 obtained by a seizure under process of the court, whereby it is held to abide such order as the court may make concerning it. * * * So also while the general rule in regard to jurisdiction in rem requires the actual seizure and possession of the res by the officer of the court, such jurisdiction may be acquired by acts which are of equivalent import, and which stand for and represent the dominion of the court over the thing, and in effect subject it to the

control of the court. Among this latter class is the levy of a writ of attachment or seizure of real estate, which being incapable of removal, and lying within the territorial jurisdiction of the court, is for all practical purposes brought under the jurisdiction of the court by the officer's levy of the writ and return of that fact to the court. So the writ of garnishment or attachment, or other form of service, on a party holding a fund which becomes the subject of litigation, brings that fund under the jurisdiction of the court, though the money may remain in the actual custody of one not an officer of the court." The service of the summons on the bank is, under the doctrine thus established, the equivalent of a seizure of the property of each depositor in his account with the bank and gives the court jurisdiction over it to the same extent as in cases in garnishment and other proceedings quasi in rem. To the same point see 6 Corp. Jur., p. 90, where many cases are cited.

With respect to the question of the kind of process necessary against the owner of the chose in action in such cases, the rule is declared to be that the state has power to dispose of such specific property and adjudicate the title thereto without personal notice to the owner thereof, provided the substituted notice is reason-
91 able and adequate. In Roller v. Holly, 176 U. S. 409, on this point the court said: "It is manifest that the requirement of notice would be of no value whatever, unless such notice were reasonable and adequate for the purpose." In Arndt v. Griggs, 134 U. S. 321, in a decision holding that a decree to quiet title to real estate was valid if made upon a regular service by publication, the court said that the state "has control over property within its limits; and the condition of ownership of real estate therein, whether the owner be stranger or citizen, is subjection to its rules concerning the holding, the transfer, liability to obligation, private or public, and the modes of establishing titles thereto. It cannot bring the person of a non-resident within its limits—its process goes not out beyond its borders—but it may determine the extent of his title to real estate within its limits; and for the purpose of such determination may provide any reasonable methods of imparting notice."

This brings us to the question whether or not the notice to the depositors provided by the statute is reasonable and adequate under the circumstances.

It is not contended that the facts required to be stated in the summons and notice to be published are insufficient to apprise any depositor who may read them of the nature of the proceeding and the object sought. The only serious objection to the efficacy of the publication as notice is that the statute requires nothing more than it be made in a newspaper of general circulation published in Sacramento county, and that this is not a reasonable notice with respect to persons having deposits in banks doing business in other counties. We see no force in this objection. A person may bring an action in any county in the state to recover money on contract, may obtain jurisdiction of the defendant for the purpose of
92 attachment by publication, and may serve garnishee process on any debtor of the defendant who can be found in any

county of the State. (Code Civ. Proc., secs. 412, 413, 540, 542, subd. 5.) The superior court of such county has jurisdiction of such action, although the defendant may never have resided therein and the person served as garnishee may reside in some other county and the contract may have been made elsewhere. The publication in such cases in the county in which the suit is brought is the universal practice. Yet it would be no more likely to give notice to the defendant in the action than the notice provided for in these statutes. The validity of judgments regularly obtained in that manner has never been questioned. Our numerous statutes provide for many proceedings either strictly in rem or quasi in rem, in which the property rights of individuals are affected and the notice provided for is solely by publication in some newspaper, or, in some instances, by merely the posting of notices in public places in the county, and in which the residence of the person to be affected thereby is regarded as immaterial to the validity of the proceeding. (Crall v. Poso Irr. Dist., 87 Cal. 148; Estate of Warfield, 22 Cal. 63; Rogers v. King, 22 Cal. 72; Halleck v. Moss, 22 Cal. 274; State v. McGlynn, 20 Cal. 270; Irwin v. Scriber, 18 Cal. 500.) In Bennett v. Creditors, 22 Cal. 41, and Brewster v. Ludekins, 19 Cal. 170, it was held that the court acquired jurisdiction, under the statute (Stats. 1860, 283), to discharge an insolvent upon notice by publication for four weeks in a newspaper of the county in which the debtor resides. Many similar examples could be given, but we deem it unnecessary to pursue this subject further.

In view of the nature of the proceeding, the character of the property to be affected thereby, and the conditions to which they apply, we think it cannot be said that the method prescribed for
93 imparting notice to the depositor is unreasonable or inadequate. The complaint must show that the deposit accounts in question have remained unclaimed and unchanged by any deposit or withdrawal for a period of twenty years, and that no person claiming it has filed any notice with the bank showing his present residence. Ever since the year 1893, every savings bank in the state has been required to publish annually in a newspaper of the city or town in which it is situated a sworn statement showing the amount of each deposit therein, the name and last known residence of each depositor, and the fact of his death, if known, in all cases where the depositor has not made a deposit or withdrawal for more than ten years next preceding, except where the depositor is known to be living and the deposit is less than fifty dollars. (Stats. 1893, 183.) In 1897 these requirements were extended to all banks of deposit. (Stats. 1897, 27.) In 1905 these provisions were incorporated into the code. (Civ. Code, sec. 583*b*.) It is to be presumed that these statutes have been obeyed by the banks concerned. It may fairly be inferred that the owner of a deposit under fifty dollars who has not claimed it for twenty years has either forgotten it or abandoned it. It is altogether improbable, after these annual publications of deposits over fifty dollars, that any person who resided in the county in which the bank was situated would remain ignorant thereof, or that, being aware of it, he would have not claimed it before twenty

years had elapsed. It may reasonably be presumed that the owners of such accounts are non-residents of such county or of the state, or that they are dead and that their next of kin are non-residents. It would follow that no county would be a more suitable place in which to give a general notice of this character than the county of Sacramento. The legislature is the authority that must de-
94 termine questions of this character, and the determination is final unless the court can say that it is unreasonable. As we are unable to reach such conclusion we must hold the provision valid.

The further claim is made that there can be no valid service by publication in any case unless there has been some preliminary proof to the court as foundation therefor that the person to be affected by the published notice resides out of the state or has departed from the state, or cannot after due diligence be found within the state, or conceals himself to avoid service of summons. One or the other of these facts are required to be stated, by the code, in order to obtain an order for publication of summons in an ordinary action. (Code Civ. Proc., sec. 412).) We are cited to no decision holding that preliminary proof to the court of either of these things is essential to constitute due process of law in case of service by publication. There are, of course, very many decisions holding that a publication under the code cannot be valid unless this section is complied with. But such decisions do not establish the proposition that the legislature is without power to authorize service by publication in any case where such facts are not established prima facie by some preliminary showing. The decisions already cited show that rights can be affected and changed upon notice by publication without such preliminary showing. We perceive no reason why the legislature when providing for a special class of persons such as the depositors herein question, may not itself determine that the facts authorize a substituted service. We are of the opinion that it is within the power of the state, under circumstances such as appear in the present case, to take charge of the deposits such as are here involved, upon the general notice provided by this statute. (Cunnius v. Reading School Dist., 198 U. S. 470; Nelson v. Blinn, 197 Mass. 279.)

95 Section 1272 of the Code of Civil Procedure allows "any person not a party or privy" to "any proceeding had under this title" to petition the court at any time within five years after final judgment in such proceeding for another judgment directing that the property declared in the previous judgment to have escheated to the state be delivered to him, or if it is money, that the amount be paid to him by the state, and be declared to be his own. The title referred to is title VIII, the subhead of which is "Escheated Estates," and it includes sections 1272 and 1273. Although the language of section 1273, literally interpreted, would bar all persons whatever from afterward claiming the property adjudged to have escheated, section 1272 indicates that it was not intended to be final except as to persons who were "parties or privies" to the proceeding. As the process provided for in the proceeding under sec-

tion 1273 purports to run to all the world, it may be difficult to give effect to the phrase "party or privy," as used in section 1272, unless it is confined to persons who appeared in the proceeding and those claiming under such persons. If it has this meaning, the judgment under section 1273 does not finally bar the depositors or others interested who did not appear, but merely sets the five-year period running against. As we remarked at the outset, no persons appeared or appealed except the bank, and the rights of others persons cannot be adjudicated on this appeal. Consequently we express no opinion upon the question just stated. We mention it only to forestall the inference that we have decided it by implication.

It may be true, as the appellant insists, that the result of proceedings under this statute may in rare instances operate unjustly upon depositors, even if they have an additional five years
96 in which to appear. This objection is answered by the Supreme Court of the United States in Blinn v. Nelson, 222 U. S. 7, by the following remark: "Now and then an extraordinary case may turn up, but constitutional law like other mortal contrivances has to take some chances, and in the great majority of instances no doubt justice will be done."

We find no ground upon which the appeal can be sustained.

The judgment is affirmed.

SHAW, *J.*

We concur:
WILBUR, *J.*
SLOANE, *J.*
LAWLOR, *J.*
LENNON, *J.*
ANGELLOTTI, *C. J.*

97 In the Supreme Court of the State of California.

Bank.

Sacramento No. 2890.

STATE OF CALIFORNIA, Plaintiff, Respondent,

vs.

SECURITY SAVINGS BANK et al., Defendants; SECURITY SAVINGS BANK, a Corporation, Defendant, Appellant.

On Appeal from the Superior Court in and for the County of Sacramento.

The above entitled cause having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

It is ordered, adjudged, and decreed by the Court that the Judgment of the Superior Court in and for the County of Sacramento in the above entitled cause, be and the same is hereby affirmed, Respondent to recover costs of appeal.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 5th day of July 1921, and now remaining of record in my office.

Witness my hand and the seal of the Court, affixed at my office, this 5th day of August, A. D. 1921.

B. GRANT TAYLOR
Clerk,

By I. ERB,
Deputy.

98 In the Supreme Court of the State of California.

Sac. No. 2890.

STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

SECURITY SAVINGS BANK, a Corporation, Defendant and Appellant.

Petition for Writ of Error.

To the Honorable Frank M. Angellotti, Chief Justice of the Supreme Court of the State of California:

Now comes Security Savings Bank, a corporation, and complains and alleges that on the 5th day of July, 1921, a final judgment was duly entered by the Supreme Court of the State of California, that being the highest court of said State of California in which a decision in this suit and matter could be had, affirming the judgment entered against your petitioner by the Superior Court of the State of California in and for the County of Sacramento, in a suit wherein the State of California was plaintiff and said Security Savings Bank, a corporation, was a defendant.

That this is an action by the State of California against said Security Savings Bank and certain depositors therein to declare an escheat of certain bank deposits in said Security Savings Bank, under the provisions of Section 1273 of the Code of Civil Procedure
99 of the State of California, and Section 15 of the Bank Act of said State, being Section 15 of Chapter 76 of the Statutes of California of 1909, as amended by Section 5 of Chapter 608 of the Statutes of California of 1915.

That service of summons in said action against the defendant depositors and against all other claimants to said deposits was had by publication in a newspaper in the County of Sacramento, and upon the failure of any of said depositors to appear, their defaults were entered.

That in the answer of your petitioner in said action it is expressly charged that the provisions of said Section 15 of the said Bank Act and the provisions of said Section 1273 of the Code of Civil Procedure of said State are unconstitutional, null and void and repugnant

to and in violation of Section 10 of Article 1 of the Constitution of the United States; and repugnant to and in violation of the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States.

That notwithstanding these facts it was adjudged by the said Supreme Court of the State of California, by its said final judgment in the above entitled cause, that the provisions of the said Section 1273 of the Code of Civil Procedure of said State and said Section 15 of the Bank Act of said State are not in conflict with the provisions of Section 10 of Article I of the Constitution of the United States, nor in conflict with Section 1 of Article XIV of the Amendments to said Constitution.

That in the aforesaid judgment and proceedings certain errors were committed, to the prejudice of your petitioner, all of which will more fully appear from the assignment of errors which is filed herewith.

100 Wherefore, your petitioner prays that a writ of error from the Supreme Court of the United States may issue in its behalf to the Supreme Court of the State of California and the judges thereof, for the correction of the errors so complained of and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supeme Court of the United States.

Dated: this 29th day of September, 1921.

McCUTCHEN, OLNEY & WILLARD,
McCUTCHEN, OLNEY, WILLARD,
MANNON & GREENE,
Attorneys for said Petitioner.

101 [Endorsed:] Original. Sac. No. 2890. In the Supreme Court of the State of California. State of California, Plaintiff and Respondent, vs. Security Savings Bank, a Corporation, Defendant and Appellant. Petition for Writ of Error. Filed Sep. 30, 1921. B. Grant Taylor, Clerk, by Erb, Deputy. McCutchen, Olney, Willard, Mannon & Greene, Counselors at Law, Balfour Building, San Francisco, California.

102 In the Supreme Court of the State of California.

Sac. No. 2890.

STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

SECURITY SAVINGS BANK, a Corporation, Defendant and Appellant.

Assignment of Errors.

Now comes Security Savings Bank, defendant and appellant in the above cause, and plaintiff in error in the Supreme Court of the United States, and respectfully submits that in the record, proceed-

ings, decision and final judgment of the Supreme Court of the State of California in said cause, there is manifest error; and said plaintiff in error presents the following assignment of errors:

I.

The Supreme Court of the State of California erred in holding that the provisions of Section 1273 of the Code of Civil Procedure of the State of California, and the provisions of Section 15 of the Bank Act of said State, being Section 15 of Chapter 76 of the Statutes of California of 1909, as amended by Section 5 of Chapter 608 of the Statutes of California of 1915, are not in conflict with and in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States, in that the State of California,
103 by and through the provisions of said Section 1273 of said Code of Civil Procedure and said Section 15 of said Bank Act, assumes and seeks: (1) To deprive the plaintiff in error and certain other citizens and persons of property without due process of law; and, (2) To deny to the plaintiff in error and certain other citizens and persons within the jurisdiction of said State the equal protection of the laws.

II.

Said court erred in holding that by the provisions of said Section 1273 of said Code of Civil Procedure and said Section 15 of said Bank Act, the plaintiff in error is not deprived of property without due process of law.

III.

Said court erred in holding that the provisions of said Section 1273 of said Code of Civil Procedure and said Section 15 of said Bank Act do not deny to plaintiff in error the equal protection of the laws.

IV.

Said court erred in holding that by the provisions of said Section 1273 of said Code of Civil Procedure and said Section 15 of said Bank Act, the owners of unclaimed bank deposits in the plaintiff-in-error bank, are not deprived of property without due process of law.

V.

Said court erred in holding that the provisions of said Section 1273 of said Code of Civil Procedure and said Section 15 of said Bank Act do not deny to the owners of unclaimed deposits in the plaintiff-in-error bank, the equal protection of the laws.

VI.

Said court erred in holding that under the provisions of said Section 1273 of said Code of Civil Procedure and said Section 15
104 of said Bank Act, the Superior Court of the State of California in and for the County of Sacramento acquired jurisdiction in

the above-entitled cause, over unclaimed deposits in the plaintiff-in-error bank.

VII.

Said court erred in holding that under the provisions of said Section 1273 of said Code of Civil Procedure and said Section 15 of said Bank Act, reasonable or adequate notice of the above-entitled cause was given to the owners of unclaimed deposits in the plaintiff-in-error bank.

VIII.

Said court erred in holding that under the provisions of said Section 1273 of said Code of Civil Procedure and said Section 15 of said Bank Act, due or sufficient service of process was made upon the owners of unclaimed deposits in the plaintiff-in-error bank.

IX.

Said court erred in holding that the provisions of said Section 1273 of said Code of Civil Procedure and said Section 15 of said Bank Act are not in conflict with and in violation of Section 10 of Article I of the Constitution of the United States.

X.

Said court erred in holding that the provisions of said Section 1273 of said Code of Civil Procedure and said Section 15 of said Bank Act, do not impair the obligation of the contracts between plaintiff-in-error bank and the owners of unclaimed deposits therein.

Wherefore, plaintiff in error prays that said judgment of the Supreme Court of the State of California be reversed for the errors aforesaid, and that the Supreme Court of the State of Cali-
105 fornia be directed to enter judgment in this action in favor of plaintiff in error.

Dated: this 29th day of September, 1921.

McCUTCHEN, OLNEY & WILLARD,
McCUTCHEN, OLNEY, WILLARD,
MANNON & GREENE,
Attorneys for Appellant and Plaintiff in Error.

106 [Endorsed:] Sac. No. 2890. In the Supreme Court of the State of California. State of California, Plaintiff and Respondent, vs. Security Savings Bank, a corporation, Defendant and Appellant. Assignment of Errors. Filed Sep. 30, 1921. B. Grant Taylor, Clerk, by Erb., deputy. Copy. McCutchen, Olney, Willard, Mannon & Greene, Counselors at Law, Balfour Building, San Francisco, California.

107 In the Supreme Court of the State of California.

Sac. No. 2890.

STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

SECURITY SAVINGS BANK, a Corporation, Defendant and Appellant.

Order Allowing Writ of Error and Fixing Amount of Cost Bond.

On reading of the petition of Security Savings Bank, a corporation, for writ of error and the assignment of errors, and upon due consideration of the record of the above-entitled cause;

It is ordered that a writ of error in said cause be and it is hereby allowed from the Supreme Court of the United States to the Supreme Court of the State of California.

And it is further ordered that the amount of the bond to be furnished by said petitioner be and the same is hereby fixed at the sum of Five hundred ($500.00) Dollars.

Dated: this 29 day of September, 1921.

F. M. ANGELLOSSI,
Chief Justice of the Supreme Court of the State of California.

108 [Endorsed:] Sac. No. 2890. In the Supreme Court of the State of California. State of California, Plaintiff and Respondent, vs. Security Savings Bank, a Corporation, Defendant and Appellant. Order Allowing Writ of Error and Fixing Amount of Cost Bond. Filed Sep. 30, 1921. B. Grant Taylor, Clerk, by Erb., Deputy. Copy. McCutchen, Olney, Willard, Mannon & Greene, Counselors at Law, Balfour Building, San Francisco, California.

109 In the Supreme Court of the United States.

SECURITY SAVINGS BANK, a Corporation, Plaintiff in Error,

vs.

STATE OF CALIFORNIA, Defendant in Error.

Bond on Writ of Error.

Know all men by these presents: That we, Security Bank and Trust Company, formerly Security Savings Bank, a corporation duly organized and existing under and by virtue of the laws of the State of California, as principal, and American Surety Company of New York, a corporation duly organized and existing under and by virtue of the laws of the State of New York, as surety, are held and firmly bound unto the above-named State of California in the sum of five hundred (500) dollars, to be paid to the said State of Cali-

fornia, to which payment well and truly to be made we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 29th day of September, A. D. 1921.

Whereas the above-named plaintiff in error seeks to prosecute its writ of error from the Supreme Court of the United States to the Supreme Court of the State of California, to reverse the
109½ judgment rendered in the above-entitled action by the said Supreme Court of the State of California;

Now, therefore, the condition of this obligation is such that if the above-named plaintiff in error shall prosecute its said writ of error to effect and answer all costs and damages that may be adjudged if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

[SEAL.] SECURITY BANK AND TRUST COMPANY,
By W. F. MORRISH,
Vice-President,
By EDWARD D. OAKLEY,
Secretary.

[SEAL.] AMERICAN SURETY COMPANY OF NEW YORK,
By D. ELMER DYER,
Resident Vice-President,
By E. S. OLSON, [SEAL.]
Resident Asst. Secretary.

The foregoing bond is approved this 30th day of September, 1921.

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

110 [Endorsed:] Sac. 2890. In the Supreme Court of the United States. Security Savings Bank, a Corporation, Plaintiff in Error, vs. State of California, Defendant in Error. Bond on Writ of Error. Filed Sep. 30, 1921. B. Grant Taylor, Clerk, by Erb, Deputy. Copy. McCutchen, Olney, Willard, Mannon & Greene, Attorneys for Plaintiff in Error, Balfour Building, San Francisco, California.

111 In the Supreme Court of the United States.

SECURITY SAVINGS BANK, a Corporation, Plaintiff in Error,

vs.

STATE OF CALIFORNIA, Defendant in Error.

Writ of Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of California, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of California, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the State of California and Security Savings Bank, a corporation, wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the constitution, treaties and laws of the United States, and the decision was in favor of their validity, a manifest error hath happened to the great damage of the said Security Savings Bank, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in
112 this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., within sixty days from the date hereof in the said Supreme Court of the United States to be then and there held; that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable William H. Taft, Chief Justice of the United States, this 30th day of September, in the year of our Lord, One Thousand Nine Hundred and Twenty-one.

WALTER B. MALING,
Clerk of the District Court of the United States
for the Northern District of California.
[SEAL.] By J. A. SCHAERTZER,
Deputy Clerk.

Allowed by
F. M. ANGELLOTTI,
Chief Justice of the Supreme Court
of the State of California.

113 [Endorsed:] Original. Sac. 2890. In the Supreme Court of the United States. Security Savings Bank, a corporation, Plaintiff in Error, vs. State of California, Defendant in Error. Writ of Error. Filed Sep. 30, 1921. B. Grant Taylor, clerk, by Erb, Deputy. McCutchen, Olney, Willard, Mannon & Greene, Counselors at Law, Balfour Building, San Francisco, California

114 In the Supreme Court of the State of California.

Sac. No. 2890.

STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

SECURITY SAVINGS BANK, a Corporation, Defendant and Appellant.

Citation.

THE UNITED STATES OF AMERICA, *ss:*

To the State of California, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, D. C., within sixty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the State of California, wherein Security Savings Bank, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Frank M. Angellotti, Chief Justice of the Supreme Court of the State of California, this 29th day of September, in the year of our Lord, One Thousand Nine Hundred and Twenty-one.

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

115 [Endorsed:] Original. Sac. No. 2890. In the Supreme Court of the State of California. State of California, Plaintiff and Respondent, vs. Security Savings Bank, a corporation, Defendant and Appellant. Citation. Filed Sep. 30, 1921. B. Grant Taylor, Clerk, by Erb, Deputy. McCutchen, Olney, Willard, Mannon & Greene, Counselors at Law, Balfour Building, San Francisco, California.

Due service and receipt of copy is hereby acknowledged, this 30th day of September, A. D. 1921, at the office of the Attorney General of the State of California, of the within citation on writ of error, and also of the following papers, to-wit:

1. Petition for writ of error herein;

2. Assignment of errors herein;

3. Order allowing writ of error and fixing cost bond;

4. Cost bond on writ of error;

5. Writ of error.

U. S. WEBB,
Attorney General;
F. L. GUERENA,
Deputy Attorney General,
Attorneys for Respondent and Defendant in Error.

116 In the Supreme Court of the State of California.

Sac. No. 2890.

STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

SECURITY SAVINGS BANK, a Corporation, Defendant and Appellant.

Stipulation for Transcript of Record.

It is hereby stipulated and agreed, by and between the respective parties hereto, that the following papers shall constitute the transcript of record on the writ of error heretofore issued from the Supreme Court of the United States in the above-entitled cause, and that said papers only shall be transmitted to said Supreme Court of the United States by the Clerk of the above-entitled court:

1. Transcript on Appeal from the Judgment of the Superior Court of the State of California in and for the County of Sacramento, Peter J. Shields, Judge, containing the following:

a. Complaint.
b. Affidavit of publication of summons and notice to claimants.
c. Summons.
d. Notice to claimants.
e. Demurrer to complaint.
f. Minute Order overruling Demurrer to complaint.
g. Answer.
117 *h.* Judgment.
i. Notice of Appeal.
j. Bill of Exceptions.
k. Stipulation to transcript.
l. Clerk's Certificate to transcript.

2. Judgment of the Supreme Court of the State of California.

3. Opinion of the Supreme Court of the State of California, filed July 5, 1921.

4. Petition for Writ of Error.

5. Assignment of Errors.

6. Order allowing Writ of Error and fixing amount of cost bond.

7. Bond on Writ of Error.

8. Writ of Error.

9. Citation on Writ of Error.

10. This Stipulation.

Dated: San Francisco, California, November 4th, 1921.

McCUTCHEN, OLNEY, WILLARD, MANNON & GREENE,
Attorneys for Appellant and Plaintiff in Error.
U. S. WEBB,
Attorney General;
FRANK L. GUERENA,
Deputy Attorney General,
Attorneys for Respondent and Defendant in Error.

118 [Endorsed:] Original. Sac. 2890. In the Supreme Court of the State of California. State of California, Plaintiff and Respondent, vs. Security Savings Bank, a corporation, Defendant and Appellant. Stipulation for Transcript of Record. Filed Nov. 18, 1921. B. Grant Taylor, Clerk, by Erb, Deputy. McCutchen, Olney, Willard, Mannon & Greene, Attorneys for Appellant and Plaintiff-in-error, Balfour Building, San Francisco, California.

119 I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding and annexed are true and correct copies of transcript, opinion of Supreme Court, judgment, original petition for writ of error, copy of assignment of errors, order allowing writ of error, copy of bond on writ of error, original writ of error, original citation, and stipulation for transcript of record, as shown by the records of my office.

Witness my hand and the Seal of the Court, this 18th day of November, A. D. 1921.

[Seal of the Supreme Court of California.]

B. GRANT TAYLOR,
Clerk,
By I. ERB,
Deputy Clerk.

Endorsed on cover: File No. 28,601. California Supreme Court. Term No. 646. Security Savings Bank, plaintiff in error, vs. The State of California. Filed December 12, 1921. File No. 28,601.

Office Supreme Court, U. S.
FILED
AUG 31 1923
WM. R. STANSBURY
CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1923

No. 21

SECURITY SAVINGS BANK
(a corporation),
Plaintiff in Error,

vs.

STATE OF CALIFORNIA,
Defendant in Error.

BRIEF OF PLAINTIFF IN ERROR.

EDWARD J. McCUTCHEN,
WARREN OLNEY, JR.,
A. CRAWFORD GREENE,
Attorneys for Plaintiff in Error.

Parker Printing Company, San Francisco

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1923

No. 21

SECURITY SAVINGS BANK
(a corporation),
Plaintiff in Error,

vs.

STATE OF CALIFORNIA,
Defendant in Error.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF CASE.

This action involves the constitutionality of California statutes providing for the "escheat" of certain unclaimed bank deposits to the state. In

The First National Bank of San Jose v. State of California, — U. S. — ; 67 L. ed. Advance Opinions, 691,

this court held the statutory provisions involved in this action unconstitutional when applied to deposits in a national bank. It remains for the court to de-

termine in this case their constitutionality as applied to deposits in a state bank.

The present action was instituted by the attorney general of the state pursuant to the provisions of Section 1273 of the Code of Civil Procedure and Section 15 of the Bank Act of California for the purpose of securing a judicial determination that certain deposits in Security Savings Bank, the plaintiff in error, had escheated to the state. Plaintiff in error alone was personally served with summons to appear and defend the action. Summons naming as defendants the depositors of twenty-one unclaimed deposits and a notice to all other claimants of such deposits were served in accordance with the statutes by publication in a newspaper in the County of Sacramento. Upon the failure of any of these defendants to appear, their defaults were entered.

Plaintiff in error, Security Savings Bank, appeared and resisted the action on the ground that the procedure provided by the statutes was unconstitutional.

No controversy existed between the state and the bank regarding any of the deposits, and the facts were stipulated upon the trial of the case. It was agreed that the statutes had been complied with by the State in its action, and the only question was the validity of these statutes. The trial court was of the opinion that the procedure provided for by Section 1273 of the Code of Civil Procedure and Section 15 of the Bank Act was constitutional, and accordingly rendered judgment that the several deposits had escheated to the

state, and directed the bank to turn them over to the state treasurer. On appeal, this judgment was affirmed by the Supreme Court of the State of California in

State of California v. Security Savings Bank, 186 Cal. 419; 199 Pac. 791.

(The opinion of the state court is contained in the transcript to the record of this case, page 40.)

STATEMENT OF STATUTORY PROVISIONS.

Section 1273 of the Code of Civil Procedure reads as follows:

> "All amounts of money heretofore or hereafter deposited with any bank to the credit of depositors who have not made a deposit on said account or withdrawn any part thereof or the interest, and which shall have remained unclaimed for more than twenty years after the date of such deposit, or withdrawal of any part of principal or interest, and where neither the depositor or any claimant has filed any notice with such bank showing his or her present residence, shall, with the increase and proceeds thereof, escheat to the state. Whenever the attorney-general shall be informed of such deposits, he shall commence an action or actions in the name of the state of California, in the Superior Court for the county of Sacramento, in which shall be joined as parties the bank or banks in which the moneys are deposited and the names of all such depositors. All or any number of depositors or banks may be included in one action. Service of process in such action or actions shall be made by delivery of a copy of the complaint and summons to the president, cashier or managing officer of each defendant bank, and by publication

of a copy of such summons in a newspaper of general circulation published in said county for a period of four weeks. Upon the trial the court must hear all parties who have appeared therein and if it be determined that the moneys deposited in any defendant bank or banks are unclaimed as hereinabove stated, then the Court must render judgment in favor of the state declaring that said moneys have escheated to the state and commanding said bank or banks to forthwith deposit all such moneys with the state treasurer, to be received, invested, accounted for and paid out in the same manner and by the same officers as is provided in the case of other escheated property."

Section 15 of the Bank Act (as amended, Stats. 1915, p. 1106) provides as follows:

"All amounts of money heretofore or hereafter deposited with any bank to the credit of depositors who have not made a deposit on said account or withdrawn any part thereof or the interest and which shall have remained unclaimed for more than twenty years after the date of such deposit, or withdrawal of any part of principal or interest, and where neither the depositor or any claimant has filed any notice with such bank showing his or her present residence, shall, with the increase and proceeds thereof, be deposited with the state treasurer after judgment in the manner provided in the Code of Civil Procedure. At the time of issuing the summons in the action provided for in Section 1273 of the Code of Civil Procedure, the clerk shall also issue a notice signed by him, giving the title and number of said action, and referring to the complaint therein, and directed to all persons, other than those named as defendants therein, claiming any interest in any deposit mentioned in said complaint, and requiring them to appear within sixty days after the first publication of such

summons, and show cause, if any they have, why the moneys involved in said action should not be deposited with the state treasurer as in said section provided, and notifying them that if they do not so appear and show cause, the state will apply to the court for the relief demanded in the complaint. A copy of said notice shall be attached to and published with the copy of said summons required to be published by said section, and at the end of the copy of such notice so published there shall be a statement of the date of the first publication of said summons and notice. Any person interested may appear in said action and become a party thereto. Upon the completion of the publication of the summons and notice, and the service of the summons on the defendant bank, or banks, as in said Section 1273 of the Code of Civil Procedure provided, the court shall have full and complete jurisdiction over the state, and the said deposits and of the person of everyone having or claiming any interest in the said deposits, or any of them, and shall have full and complete jurisdiction to hear and determine the issues therein, and render the appropriate judgment thereon. * * * This section does not apply to any deposit made by or in the name of a person known to the president or managing officer to be living. * * * provided, that any bank which shall make any deposit with the state treasurer in conformity with the provisions of this section shall not thereafter be liable to any person for the same and any action which may be brought by any person against any bank for moneys so deposited with the state treasurer shall be defended by the attorney general without cost to such bank."

These two statutes accordingly provide that bank deposits shall escheat to the state in case they have remained untouched for more than twenty years and the depositor or other claimant has not filed with the bank

a notice of his present residence and neither the president nor the managing officer of the bank knows affirmatively that the depositor is alive. Section 1273 requires that the necessary proceedings, in which the bank and the depositors shall be named as defendants, shall be instituted by the Attorney General in the Superior Court of Sacramento County, and that service of process shall be effected by personal service on the bank and by constructive service on the depositors by publication for a period of four weeks in a newspaper in Sacramento County. Section 1273 makes no provision for the inclusion of any defendants in the action in addition to the bank and the original depositors. Section 15 of the Bank Act, however, after providing that the deposits of the class referred to shall be paid to the State Treasurer after judgment in the manner provided in the Code of Civil Procedure, requires that at the time of the issuance of summons in the action provided for in Section 1273, the clerk shall also issue a notice which shall be attached to and published with the summons, directed to all persons claiming any interest in the deposits involved in the suit and requiring them to appear in the action within a specified time and show cause why the deposits should not escheat to the state.

In brief, the law declares that unclaimed bank deposits, as therein defined, shall become the property of the state after judgment in a proceeding in which personal service of process has been made upon the bank and publication of summons naming the depositors and of notice to all other claimants has been made for four

weeks in a newspaper of Sacramento County. Such service was had in the present case.

SPECIFICATIONS OF THE ERRORS RELIED UPON.

Plaintiff in error relies upon its several assignments of errors numbered respectively, I, II, IV, VI, VII, VIII, IX, X (Transcript page 51), as follows:

I.

"The Supreme Court of the State of California erred in holding that the provisions of Section 1273 of the Code of Civil Procedure of the State of California, and the provisions of Section 15 of the Bank Act of said State, being Section 15 of Chapter 76 of the Statutes of California of 1909, as amended by Section 5 of Chapter 608 of the Statutes of California of 1915, are not in conflict with and in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States, in that the State of California, by and through the provisions of said Section 1273 of said Code of Civil Procedure and said Section 15 of said Bank Act, assumes and seeks: (1) To deprive the plaintiff in error and certain other citizens and persons of property without due process of law; and, (2) To deny to the plaintiff in error and certain other citizens and persons within the jurisdiction of said State the equal protection of the laws."

II.

"Said court erred in holding that by the provisions of said Section 1273 of said Code of Civil Procedure and said Section 15 of said Bank Act, the plaintiff in error is not deprived of property without due process of law."

IV.

"Said court erred in holding that by the provisions of said Section 1273 of said Code of Civil Procedure and said Section 15 of said Bank Act, the owners of unclaimed bank deposits in the plaintiff-in-error bank, are not deprived of property without due process of law."

VI.

"Said court erred in holding that under the provisions of said Section 1273 of said Code of Civil Procedure and said Section 15 of said Bank Act, the Superior Court of the State of California in and for the County of Sacramento acquired jurisdiction in the above-entitled cause, over unclaimed deposits in the plaintiff-in-error bank."

VII.

"Said court erred in holding that under the provisions of said Section 1273 of said Code of Civil Procedure and said Section 15 of said Bank Act, reasonable or adequate notice of the above-entitled cause was given to the owners of unclaimed deposits in the plaintiff-in-error bank."

VIII.

"Said court erred in holding that under the provisions of said Section 1273 of said Code of Civil Procedure and said Section 15 of said Bank Act, due or sufficient service of process was made upon the owners of unclaimed deposits in the plaintiff-in-error bank."

IX.

"Said court erred in holding that the provisions of said Section 1273 of said Code of Civil Procedure and said Section 15 of said Bank Act are not in conflict with and in violation of Section 10 of Article I of the Constitution of the United States."

X.

"Said court erred in holding that the provisions of said Section 1273 of said Code of Civil Procedure and said Section 15 of said Bank Act, do not impair the obligation of the contracts between plaintiff-in-error bank and the owners of unclaimed deposits therein."

PRELIMINARY ARGUMENT.

PLAINTIFF IN ERROR IS ENTITLED TO BE HEARD ON THE CONSTITUTIONAL QUESTION.

In the State Supreme Court the Attorney General of the state raised the preliminary objection that the bank could not be heard to dispute the validity of the bank deposit escheat proceeding because only the depositor's interest was affected. This objection was discountenanced by the court, in its opinion, but lest it be raised again before this court, we shall dispose of it first.

The bank has clearly two separate interests which entitle it to object to this proceeding on the grounds of unconstitutionality. The first is its own interest as depositary or debtor in the continued handling, possession and use of the funds deposited. This interest is well recognized as a property right by the Supreme Court of California in its opinion in this case. Mr. Justice Shaw says (Transcript page 42):

"It is claimed on behalf of the state, as a preliminary objection, that the defendant bank has no interest which authorizes it to dispute the validity of the law with respect to the depositors. It is not necessary to determine whether or not it could vicariously for its depositors raise the ob-

jection that the law is invalid as to them. The bank has an interest sufficient to authorize it to challenge the validity of the law on its own account. The deposit, as above shown, creates a contract between the bank and its depositors whereby the bank takes the money of the depositor and agrees to repay the amount thereof in whole or in part at any time on demand. Until payment is demanded by the depositor, the bank may loan the money deposited with it, or a large part thereof, at interest for its own benefit. It therefore has an interest in keeping the money and the right to refuse payment on a deposit account until demand therefor is made by the depositor, or some one by him authorized or by his successor in interest."

In an old case of attempted escheat of bank deposits,

Bank of Louisville v. Board of Trustees, 83 Ky. 219; 5 S. W. 735,

the court said:

"When a deposit is made in a bank a contract is created between the depositor and it, by which it acquires the right to retain, use, and control the money, subject to be returned to its customer upon his demand. That moment a right vests in him to look to the bank, and to *it alone,* for payment; and, upon the other hand, the bank is invested with the right to hold the deposit against all others. The law then existing becomes an integral part of the contract, and creates those vested rights. The act now in question divests both the bank of its right to hold the money and the depositor of his right to it because he has not been heard of for more than eight years, and vests it in the appellee. This divests both the bank and the depositor of a vested right, because it consists in the power to do certain actions or possess certain things."

The opinion then proceeds to discuss whether the divesting of thes rights is due process of law.

The Supreme Court of the United States has recognized this interest of the bank in

> *The First National Bank of San Jose v. State of California,* supra — U. S. —; 67 L. ed. Adv. Opinions 691,

in which it held this proceeding unconstitutional as to national banks because it interfered with the national banking system. If the interest of a bank in its deposits is sufficient to require protection under the National Bank Act, it is certainly enough to allow the bank to raise objection to its confiscation as a violation of due process. In the above case, the court said:

> "The depositors of a national bank often live in many different states and countries; and certainly it would not be an immaterial thing if the deposits of all were subject to seizure by the state where the bank happened to be located. The success of almost all commercial banks depends upon their ability to obtain loans from depositors, and these might well hesitate to subject their funds to possible confiscation."

The second interest of the bank which entitles it to object to a taking of the deposit without due process is its resulting liability to the depositor. If the act is constitutional, a judgment rendered under it for the escheat of the deposit, might protect the bank, but if the statute is unconstitutional, no such judgment will protect the bank.

A judgment secured under a legislative act which is unconstitutional is a nullity; it is as though it had never existed; neither rights nor defenses may be claimed under it and one who obeys such a judgment is in no better position than he would be had he acted on his own initiative and without any authority whatever.

Woolsey v. Dodge, 30 Fed. Cas. 606;

Poindexter v. Greenhow, 114 U. S. 270, 292; 29 L. ed. 185, 193;

International Harvester Company v. Commonwealth, 170 Ky. 41; 185 S. W. 102;

Hamilton v. Board of County Commissioners, (Mont.) 169 Pac. 729;

Cooley on Constitutional Limitations, page 259 (7th ed.).

On this point the state court opinion in this case reads as follows (Transcript p. 43):

"• • • the bank has the right, for its own protection, to insist that the depositor be made a party to the action to answer as to his interest. 'The person with the legal title to the demand in question should usually be made a party, as otherwise he might proceed at law notwithstanding the decree'. (15 Ency. Pl. & Pr. 593; see, also, Wilson v. Castro, 31 Cal. 427.) It can not be doubted that the state is not the holder of the legal title of the depositor. That title has not been transferred to the state by any act of the depositor, and the state can not by a mere statutory declaration take away the right of the depositor and appropriate to its own use his property therein. (Const., art. I, sec. 13.) The depositor is, therefore, a necessary party to any action by the state to enforce payment of the money due on the deposits into the state treasury,

> and the bank has the right to insist that the depositors be brought into the case as parties by some process or notice that the law recognizes as valid. It, therefore, has the right to contend that the process and notice prescribed by these statutes do not constitute due process of law."

In the case of

State v. First National Bank, 61 Ore. 551; 123 Pac. 712,

which, as we shall later show, arose under a state statute providing merely for the substitution of state for bank as depositary, the court said:

> "It stands to reason, and requires no citation of authorities to show, that, unless the proceeding operates to release the bank from liability to the depositor, the statute is inoperative."

In another case arising under a statute providing merely for a change of depositary from bank to state and not for an absolute escheat

Provident Institution for Savings v. Malone, 221 U. S. 660; 55 L. ed. 899,

the same objection, that the bank could not be heard on the question of constitutionality, was raised. The court said (p. 663) (italics ours):

> "The Massachusetts statute as to abandoned funds in saving banks only applies where the owner cannot be found. In the nature of the case, therefore, no depositor could except to the judgment of the probate court which directed the money to be turned over to the treasurer; and, it is claimed that, as the bank does not represent the depositors, it cannot be heard to raise the objection that their property has been taken without due

process of law. New York ex rel. Hatch v. Reardon, 204 U. S. 160, 51 L. ed. 422, 27 Sup. Ct. Rep. 188. *This may be true, except in so far as its rights are involved in those of the depositor.*"

The court then proceeds to inquire into and discuss the nature, the reasonableness, and the constitutionality of the statute.

As we shall later show, the California statutes attempt to provide for an absolute escheat or transfer of title to the state, and not for a mere change of depositary, but even if they attempted only the latter, the bank would be entitled to be heard as it was in the case of *Provident Institution for Savings v. Malone.* It has all the more right to be heard, if the proceeding is one for an absolute escheat.

In the argument which follows, we shall attack this California proceeding primarily as depriving the depositor of his property, without due process of law. But it must always be borne in mind that if it is not due process and is unconstitutional as to the depositor, it is no protection to the bank and hence unconstitutional as to the bank as well.

ARGUMENT.

Two main questions are presented for argument in this case: first, whether any proceeding for absolute "escheat" of bank deposits merely because unclaimed for a certain period is constitutional; second, even if such a proceeding may be valid, whether the specific proceeding in question provided the essentials of due process of law.

I.

ANY PROCEEDING FOR THE ABSOLUTE AND FINAL ACQUISITION BY THE STATE OF BANK DEPOSITS WHICH IS BASED MERELY UPON FAILURE ON THE PART OF THE DEPOSITOR FOR TWENTY YEARS TO MAKE CLAIM OR TO EXERCISE ANY OTHER ACT OF OWNERSHIP OR TO NOTIFY THE BANK OF HIS RESIDENCE, IS UNCONSTITUTIONAL AND VOID.

It is well settled that any taking by a state of private property for public use without just compensation is a violation of the due process clause of the 14th Amendment, and that in this connection the 14th Amendment is to be construed as if it contained the same express prohibition of such taking as that laid upon Congress by the Fifth Amendment.

Chicago, etc., R. Co. v. Chicago, 166 U. S. 226; 41 L. ed. 979;

Yesler v. Washington Harbor Line Commissioners, 146 U. S. 646; 36 L. ed. 1119;

Tindal v. Wesley, 167 U. S. 204; 42 L. ed. 137;

Smyth v. Ames, 169 U. S. 466; 42 L. ed. 819;

Madisonville Traction Co. v. St. Bernard Min. Co., 196 U. S. 239; 49 L. ed. 462.

However, in certain well-defined cases where no owner claims the property or where the last owner has died intestate and without heirs or next of kin, the taking by the state of such property has been recognized as outside of the scope of the above rule. To determine whether the California bank deposit escheat action comes within any of these cases it will be necessary first to review and analyze each of them briefly.

1. **Proceedings by which the State can acquire that which has been private property for public use without compensation.**

A. *Escheat.*

Escheat at common law was confined strictly to real property.

Co. Litt. 13a, *2 Blackstone Commentaries,* 244.

Both Blackstone and Coke in the passages referred to enumerate the only two instances in which there was escheat, namely death without heirs and attainder, which was a kind of civil death and a cutting off of heirs as a punishment on the conviction of a felony or by bill of attainder.

The adaption of escheat to non-feudal conditions in this country is pointed out by Chancellor Kent in a passage which shows that it is still confined to land:

> "All escheats, under the English law, are declared to be strictly feudal, and to import the extinction of tenure * * * But, as feudal tenures do not exist in this country, there are no private persons who succeed to the inheritance by escheat; and the state steps in the place of the feudal lord, by virtue of its sovereignty, as the original and ultimate proprietor of all the lands within its jurisdiction * * * Whenever the owner dies intestate, without leaving any inheritable blood, or if the relations whom he leaves are aliens, there is a failure of competent heirs, and the lands vest immediately in the state by operation of law."
>
> *4 Kent,* 424.

Personalty fell in a different category and did not, at least technically, escheat. Blackstone says:

"Thus again, whatever moveables are found upon the surface of the earth, or in the sea, and are unclaimed by any owner, are supposed to be abandoned by the last proprietor; and, as such, are returned into the common stock and mass of things: and therefore they belong, as in a state of nature, to the first occupant or fortunate finder, unless they fall within the description of waifs, or estrays, or wreck, or hidden treasure; for these, we have formerly seen, are vested by law in the king, and form a part of the ordinary revenue of the crown."

2 Bl. Com. 402.

Obviously bank deposits were neither "moveables * * * found upon the surface of the earth, or in the sea," nor "supposed to be abandoned". In fact, the taking by the crown of bankers' deposits was never thought of in Blackstone's day and the common law contains no case of the taking of any debt except perhaps after administration of the estate of a known decedent who died intestate and without heirs.

American state courts, however, expanded the common law doctrine of escheat by the infusion of the doctrine of abandoned goods and thus virtually treated personalty and realty as the same in the case of death of the owner intestate and without heirs. In many cases this was done without realization of the common law distinction between personalty and realty in relation to escheat. See

Deaderick v. County Court, 41 Tenn. 202;
Hall v. Claiborne, 27 Tex. 217;
Johnston v. Spicer, 107 N. Y. 185; 13 N. E. 753.

However, the development was in certain instances recognized:

Com. v. Blanton's Executors, 41 Ky. 393;

Com. v. Thomas' Administrator, 140 Ky. 789; 131 S. W. 797.

But whether this American doctrine of escheat of personalty came from escheat of land, or from doctrines of *bona vacantia* or from both, before the state could take, it was necessary that the owner be actually dead, intestate and without heirs. This rule was modified in cases which we shall discuss later under the head of "administration on the presumption of death", but for strict escheat cases where the state took the property as absolute owner, the rule is well expressed in

Hamilton v. Brown, 161 U. S. 256, 267; 40 L. ed. 691, 697,

where the court said:

> "These proceedings for the escheat of the estate of a deceased person for want of heirs or devisees, like ordinary proceedings for the administration of his estate, presuppose that he is dead; if he is still alive the court is without jurisdiction, and its proceedings are null and void, even in a collateral proceeding. Griffith v. Frazier, 12 U. S. 8 Cranch, 9, 23 (3: 471, 475); Scott v. McNeal, 154 U. S. 34 (38: 896); Hall v. Claiborne, 27 Tex. 217; Withers v. Patterson, 27 Tex. 491, 497, 86 Am. Dec. 643; Martin v. Robinson, 67 Tex. 368, 375; Caplan v. Compton, 5 Tex. Civ. App. 410. And if the death of the former owner, intestate and without heirs, is not alleged in the petition, or is not proved at the trial, a judgment for the state is erroneous and reversible by appeal or writ of error. Hughes v. State, 41 Tex. 10; Wiederanders v. State, 64 Tex. 133; Hanna v. State, 84 Tex. 664."

B. *Administration on the Presumption of Death.*

In a line of cases carried from state courts to the Supreme Court of the United States, this requirement of death found in strict escheat cases has been modified, but only when certain other requirements are fulfilled.

Thus in

Cunnius v. Reading School District, 198 U. S. 458; 49 L. ed. 1125,

a Pennsylvania statute providing a special proceeding for the administration of estates of absentees presumably dead because of absence for seven years without proof of existence was upheld and distinguished from the prior case of

Scott v. McNeal, 154 U. S. 34; 38 L. ed. 896.

The *Scott* case decided that ordinary administration proceedings held under an act which did not refer to absentees and based on the common-law presumption of death were absolutely void when the absentee turned out to be actually alive. In distinguishing the *Scott* case, Mr. Chief Justice White said (p. 472) (italics and matter in brackets ours):

> "There was no statute of the state of Washington [the state of Scott v. McNeal] providing for an administration of the estate of an absentee as such, and *creating rights and safeguards applicable to that situation,* as distinct from the general law of the state, conferring upon courts of probate power to administer the estate of deceased persons."

The opinion proceeds to decide that when such "rights and safeguards" are provided, the proceeding is valid even against a living absentee. As to what such rights and safeguards are, the opinion reads as follows (p. 476):

> "Let it be conceded, as we think it must be, that the creation by a state law of an arbitrary and unreasonable presumption of death resulting from absence for a brief period, would be a want of due process of law, and therefore repugnant to the 14th Amendment. Let it be further conceded, as we also think is essential, that a state law which did not provide adequate notice as prerequisite to the proceedings for the administration of the estate of an absentee would also be repugnant to the 14th Amendment. Again, let it be conceded that if a state law, in providing for the administration of the estate of an absentee, contained no adequate safeguards concerning property, and amounted, therefore, simply to authorizing the transfer of the property of the absentee to others, that such a law would be repugnant to the 14th Amendment. We think none of these concessions are controlling in this case. So far as the period of absence provided by the statute in question, it certainly cannot be said to be unreasonable. So far as the notices which it directs to be issued, we think they were reasonable. As concerns the safeguards which the statute creates for the protection of the interest of the absentee in case he should return, we content ourselves with saying that we think, as construed by the Supreme Court of Pennsylvania, the provisions of the statute do not conflict with the 14th Amendment."

The construction by the Supreme Court of Pennsylvania of the "safeguards" evidently referred to in the last sentence above is found in

Cunnius v. Reading School District, 206 Pa. St. 469; 56 Atl. 16,

where the court observes (p. 475):

> "If a fair and reasonable provision is made for protection of the owner in case of his reappearance the state has not exceeded its constitutional powers. Such provision, as already shown, is made by the act, under which no distribution can be made without security for reimbursement to the owner should he be shown to be alive."

Thus *Cunnius v. Reading School District* lays down three requirements for any proceeding by which the property of a mere absentee, as distinguished from one known dead, may be taken or distributed by the state. These are: 1. A reasonable presumption of death. 2. Adequate notice. 3. Protection of the interest of the absentee in case of return.

The third requirement was later modified, though not abandoned in the case of

Blinn v. Nelson, 222 U. S. 1; 56 L. ed. 65.

There a Massachusetts statute provided that in the case of an absentee disappearing to parts unknown, leaving no known agent, any party entitled to administration of the absentee's property could have a receiver appointed to take and hold the property. The statute further provided that if the absentee did not appear and claim the property in fourteen years after the date of his disappearance (or in case the receiver was not appointed until thirteen years after the date of such disappearance, then in one year after such appointment) his title was barred and the remaining property

was to be distributed to those who would have taken on the day fourteen years after the date of disappearance. It is to be noted that the first and second requirements laid down in the *Cunnius* case were complied with. First, the court had to find that the absentee had disappeared from the state for parts unknown leaving no known agent, and had to find and record the date of the disappearance; and, in view of such findings, a period of fourteen years established a reasonable presumption of death. Second, as Mr. Justice Holmes states in his opinion (p. 6):

> "There is reasonably careful provision for notice by publication before the appointment, and the whole proceeding begins with a seizure by the sheriff of the property mentioned in the original petition."

Therefore, the only question was whether the third requirement of the *Cunnius* case was satisfied, namely the protection of the interest of the absentee in the case of return. The statute was treated as in effect a statute of limitations allowing his recovery from the receiver but imposing a limitation period of fourteen years from his disappearance or at least one year from the notice and taking possession of the receiver. As Mr. Justice Holmes continues (p. 7):

> "So the question, put in the way most favorable for the plaintiff in error, is whether a statute of limitations that possibly may allow little more than one year is too short when the property is held in the quasi adverse hand of the receiver for that time (what the court would do and how it would interpret the statute if other property fell in after the receiver was appointed is not material in this

case). We cannot doubt as to the answer. If the legislature thinks that a year is long enough to allow a party to recover his property from a third hand, and establishes that time in cases where he has not been heard of for fourteen years, and presumably is dead, it acts within its constitutional discretion."

The opinion upholds legislative discretion in determining the period of limitation; it does not intimate that the legislature could abolish such period of "safeguard" altogether, but implies that it could not.

C. *Change of Depositary.*

There remains to be discussed only one other class of cases in which the state is allowed to take private property for public use without compensation. This class is considered in a decision of the United States Supreme Court in

Provident Institution for Savings v. Malone, 221 U. S. 660; 55 L. ed. 899.

This case also arose under a Massachusetts statute, one which provided that deposits in savings banks which had remained inactive and unclaimed for thirty years, and where the claimant was unknown or the depositor could not be found, should be turned over to the state treasurer. The court upheld the statute but was careful to point out the distinction between this kind of proceeding and either escheat or administration on the presumption of death. The opinion reads (p. 664):

"• • • This, however, is not a statute of escheats, since it does not proceed on the theory that

the depositor is dead, leaving no heirs. It does not purport to dispose of lost property, but deals with a deposit the owner of which, though known, cannot be found. The act is like those which provide for the appointment of custodians for the real and personal property of an absentee."

Further (italics ours):

"* * * Before the money can be turned over to the receiver general, proceedings must be instituted in the probate court, and, under the decision of the supreme court of the state, personal notice must be given to the bank, and citation and notice usual in the probate court, published, so as to give the depositor, if living, and his heirs, if dead, opportunity to appear and be heard. *Even then the property is not escheated, but deposited with the treasurer, to hold as trustee for the owner* or his legal representatives, to whom it is payable when they establish their right."

In other words, such a statute merely substitutes the state for the bank as depositary or holder of the funds deposited, and does not attempt to give the state an absolute title against the real owner or his heirs.

A few cases in which state courts have upheld similar statutes contain the same distinction. In

State v. First National Bank of Portland, 61 Ore. 551; 123 Pac. 712,

the court said (p. 714):

"But the proceeding in question, while in the nature of an escheat proceeding, does not assume the death of a depositor, and is in no way an attempt to administer upon his estate. In such a proceeding, proof of death would be necessary to give jurisdiction; but *in this proceeding the property is seized and held for the owner*, who may or may not be dead."

Other such cases are:

Germantown Trust Co. v. Powell, 265 Pa. 71; 108 Atl. 441;

in which the owner could recover from the state treasury within ten years,

Com. v. Dollar Savings Bank, 259 Pa. 138; 102 Atl. 569; and

State v. Security Savings Bank, 20 Cal. App. Dec. 159; 154 Pac. 1070;

which arose under Section 15 of the Bank Act of California as amended in 1913 and before the amendment in 1915 under which the present case has arisen. The court said (154 Pac. 1072):

> "In the consideration of this question it is to be noted at the outset that the section of the Bank Act under review does not contemplate any change in the ownership of the funds in question. It purports to deal with possession only * * *".

2. Analysis of the proceeding in question shows that it does not fulfill the requirements of any one of these classes and is therefore an unconstitutional taking of private property for public use without just compensation.

What is the exact nature of the proceeding which Section 1273 of the Code of Civil Procedure, and Section 15 of the Bank Act attempt to create? Section 1273 provides:

> "All amounts of money heretofore or hereafter deposited * * * shall, with the increase and proceeds thereof, escheat to the state."

25

But obviously the money deposited does not itself escheat, cannot itself be taken by the state, for it is well known that in the ordinary bank deposit, title to the money deposited passes to the bank and the depositor becomes merely a creditor of the bank.

1 Morse on Banks and Banking, (5th Ed.) Sec. 289;

National Bank v. Millard, 10 Wall. 152; 19 L. ed. 897;

Thompson v. Riggs, 5 Wall. 663; 18 L. ed. 704;

Baldwin's Bank v. Smith, 215 N. Y. 76; 109 N. E. 138;

Smith's Cash Store v. First Nat. Bank, 149 Cal. 32; 84 Pac. 663.

This is recognized by the Supreme Court of California in its opinion in this case (Transcript p. 42):

> "It is of some importance, in view of the argument presented, to note that the statutes in question do not provide for an actual seizure of any money, either before or after the judgment, but do provide, with respect to each depositor, for the payment to the state by the bank of the debt the bank owes to the depositor."

It is recognized that the money deposited belongs to the bank and cannot be escheated. But the depositor's right against the bank, his credit or the bank's debt, it is argued, can escheat and be taken by the state. However, when that is done the state has only what the depositor had, a credit, and it becomes necessary to take a further step, namely to make demand and collect the debt which the bank owes, just as the depositor

would have to do to get the money himself. Thus the attempt is really to combine two separate actions, one of escheat, and another of collection, in the same proceeding. It is not denied that this might be validly done if all the requisites of the two actions were contained in the one proceeding. But they are not contained in this proceeding.

In the first place this proceeding is obviously not within the class of cases first above reviewed under the heading "Escheat" because the depositor is not known to be dead. At the very most there is only a presumption.

Is it then within the second class of cases allowing administration on the presumption of death? Although the result sought to be accomplished is clearly the same as the result obtained in these cases, namely the final cutting off of the rights of an absentee in his property, an examination shows that the proceeding does not fulfill the three requirements laid down for cases in that class. There is not established a reasonable presumption of death, there is not adequate notice, and there are no "safeguards" of the absentee's interests, even for a limited period.

(1) The only facts upon which the presumption of death in this proceeding is based are a failure on the part of the depositor to make any deposit, withdrawal or claim for twenty years, a failure to file with the bank a notice showing present residence, and the absence of knowledge by the president or managing officer of the bank that the depositor is alive. There is no proof

required that the depositor has left the state, that he has not been heard of, or even that he has not filed with the county recorder a notice of residence as provided in Section 1163 of the Civil Code of California to establish "the place where service of summons may be made". Indeed, the depositor may be an absent-minded but well-known person in the very community where the bank is located; he may even be known to the Attorney General himself. But regardless of such facts, and without any inquiry outside of the bank itself, he is presumed dead. This is not a compliance with the requirement for a reasonable presumption of death.

(2) The question of adequate notice will be discussed in the latter half of this brief as a general essential of due process and is here referred to merely as a reminder that in the second class of cases heretofore reviewed ("administration on the presumption of death"), it is more than a mere general requirement, but is a special essential without which a reasonable presumption of death cannot well arise.

(3) Furthermore, in this proceeding there is no provision safeguarding the interest of the absentee in case of his return, even for so limited a period as that of *Blinn v. Nelson,* supra. In the case of

State v. Savings Union Bank, etc., Co., 186 Cal. 294; 199 Pac. 26,

the state Supreme Court, in reviewing the statute now under consideration, decided that a depositor may still recover his deposit after the twenty years have elapsed

but before action by the Attorney General as provided in Section 1273. In other words, the court has held that the escheat is not immediate and self-executing, but that it requires a judicial determination and that until such determination, or at least until action has been started, the depositor may recover the deposit. Were it not for this judicial determination it might fairly be claimed, as a matter of construction of Section 1273, that the escheat becomes absolute upon the mere expiration of twenty years without deposit, withdrawal or claim, and it seems clear to us that a very perceptible straining of the statute was required in order to allow the depositor a period of recovery after the twenty years and *until action* by the Attorney General. The statute can not be further strained, and *when action has been commenced* by the Attorney General, the period of recovery by the depositor has ended. There is no longer any "safeguard" of the interest of the depositor.

The word "escheat" as used in the statute, even if technically incorrect, was undoubtedly intended to mean that the state should thereby obtain an absolute property in or title to the deposit. There is no room for a construction of this statute as merely transferring the possession of the deposit to the state and leaving the depositor with a right against the state, because the prior statute (the Bank Act as amended in 1913) was construed by the District Court of Appeal as such a statute in *State v. Security Savings Bank,* 154 Pac. 1070, supra, and thereafter the legislature passed Section 1273 of the Code of Civil Procedure creating the

present proceeding. If the legislature had wanted merely to have possession transferred to the state in these cases, existing legislation was adequate. Therefore the change must have been in the attempt to make an absolute "escheat".

This is recognized by the Supreme Court of the state in its opinion in this case (Transcript p. 44):

> "The judgment does not seek to declare or enforce any obligation of the depositors or any of them to any other person or persons. Its sole object with respect to them is to act upon the obligations they respectively hold against the bank, to effect a substitution of the state for the bank with respect to such obligation, and *to transfer the title* of that particular property of the depositors, respectively, *to the state.*"

That being so, what right has the depositor to a return of his money in case he returns after judgment in the escheat action, or even after action commenced? None. No "safeguard" is provided. The only apparent safeguard, Section 1272 of the Code of Civil Procedure, entitled, "Proceedings after judgment by persons claiming escheated estates" applies only to "a person not a party or privy". In discussing this section in its opinion in this case, the state Supreme Court refrained from deciding whether the notice in Section 15 of the Bank Act made all the world "party or privy" and even suggested that the word "party" might be confined to those who appeared in the case (Transcript pp. 47-8). But in the absence of an express construction of the term, "party" must at least be taken to include the depositor, who is a named de-

fendant in the case, who is served with purported process, and whose default is entered as the default of any defendant is entered.

Therefore the depositor has no period of recovery in this proceeding. As we have heretofore pointed out, the United States Supreme Court has never countenanced a proceeding in which there has been such a complete disregard of the rights of an absentee.

Therefore this proceeding fulfills none of the requirements for a valid proceeding against an absentee on the presumption of death. Last of all, it does not fall within the third class of cases heretofore discussed under the heading, "Change of Depositary," because as we have shown above in discussing the proceeding to show that the depositor has no right to return of his money after judgment, it provides for an absolute passage of title to the state and not for a mere change of possession. Being in none of the classes of cases recognized as outside the rule against taking by the state of private property for public use without just compensation, it is subject to that rule and is unconstitutional and void.

II.

EVEN IF A PROCEEDING FOR THE ABSOLUTE ESCHEAT OF BANK DEPOSITS COULD BE VALID, THIS PROCEEDING DOES NOT PROVIDE DUE PROCESS OF LAW AND IS THEREFORE UNCONSTITUTIONAL AND VOID.

Due process of law in any proceeding affecting property rights requires that the court have jurisdiction.

Pennoyer v. Neff, 95 U. S. 714; 24 L. ed. 565.

Jurisdiction ordinarily depends upon notice and an opportunity for hearing, but the exact amount and kind of notice and opportunity differs, depending upon whether the action is *in personam, in personam quasi in rem* (hereafter called merely *quasi in rem*) or *in rem*. Although the distinctions between these three kinds of actions (and especially between those *in personam* and the large class of actions *in rem*, which includes actions *quasi in rem* as well as those strictly *in rem*) have been pointed out in many cases, it is in many cases difficult to determine in exactly which class the proceeding falls. In our opening brief in the state Supreme Court, while recognizing that the attempted effect was *in rem* we took the position that the proceeding in question was one *in personam* because of the fact that the only process was personal, and that there was no process directly against the *res*—no seizure of the *res* actual or constructive. However, the opinion of the court treated the proceeding as one *quasi in rem* (Transcript p. 44) and sustained it as such. For that reason, we shall not attempt before this court to define the nature of the proceeding, but shall discuss it, first,

as *in personam*, second as *quasi in rem*, and third as strictly *in rem*, and we shall attack it successively under each of those heads.

1. **If the proceeding is in personam it does not afford due process because it provides for service upon non-residents by publication merely and because it provides for service upon residents by publication without any showing that personal service is impossible or impractical.**

When a proceeding is strictly *in personam*, personal service or a voluntary appearance in the state is essential to jurisdiction over non-residents.

Pennoyer v. Neff, supra, 95 U. S. 714; 24 L. ed. 565;
D'Arcy v. Ketchum, 11 How. 165; 13 L. ed. 648;
Cooper v. Reynolds, 10 Wall. 308; 19 L. ed. 931;
Wilson v. Seligman, 144 U. S. 41; 36 L. ed. 338;
Riverside v. Menefee, 237 U. S. 189; 59 L. ed. 910.

There is of course no personal service or appearance of the depositor in the proceeding in question and therefore no *in personam* jurisdiction of a non-resident depositor is obtained.

Even as against residents of the state, jurisdiction cannot validly be acquired by publication unless reasonable necessity for that form of service be shown—in other words unless there has been a reasonable attempt to find and serve them personally.

In *Bardwell v. Anderson*, 44 Minn. 97; 46 N. W. 315, the Supreme Court of Minnesota held a statute of that state authorizing the service of summons by publication

in actions to foreclose mortgages or enforce mechanic's liens on real property to be lacking in due process of law and without effect as to any defendant upon whom personal service might reasonably be had.

From the opinion of the court, which is by Mr. Justice Mitchell, we quote the following (46 N. W. 318):

> "But what we do mean to assert is that the right to resort to such constructive or substituted service in personal actions proceeding according to the course of the common law rests upon the necessities of the case, and has always been limited and restricted to cases where personal service could not be made because the defendant was a non-resident, or had absconded or had concealed himself for the purpose of avoiding service.
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> • • • • • • •
>
> As a substitute for the means formerly resorted to in England in such cases, most of the American states have adopted service of the process or summons by publication. But we have found no statute, except the one now under consideration, which has assumed to authorize such a mode of service, and have found no case where its validity has been sustained by the courts, except as to defendants who could not be found within the jurisdiction either because of non-residence, or because they had absconded or concealed themselves to avoid service of process.
>
> • • • • • • •
>
> We think it would be a surprise to the bench and the bar of the country if it should be held that process or summons in ordinary civil actions might be served on resident defendants, present and capable of being found within the jurisdiction of the court, merely by publication in a newspaper. The dangers and abuses that would arise from such a practice are too apparent to require to be named or even suggested."

A similar decision was rendered by the Supreme Court of Idaho in the case of

Bear Lake County v. Budge, 9 Idaho 703; 75 Pac. 614.

The statute there involved related to actions to quiet title to water rights, in which it was provided that service of summons by publication might be had as to all claimants generally. The court said:

> "The state as well as the federal Constitution prohibits the deprivation of private property without due process of law. They contemplate reasonable service of summons upon all defendants. And reasonable service of summons is actual service upon all known defendants who reside in and can be found in the county when the suit is brought; and we think it requires personal service upon all known defendants residing within the state if such defendants can be found therein.
>
> It cannot be said that the section under consideration takes great precaution to discover the unnamed defendants residing in the county where the suit is pending. It fails to require the personal service of summons on known defendants residing in such county, and is in conflict with those provisions of our state Constitution, as well as the Constitution of the United States, which provide that no person shall be deprived of life, liberty, or property except by due process of law. Those provisions prohibit the Legislature from dispensing with the personal service of summons when it is practicable.
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> • • • • • • •
>
> Of course, if defendants are in reality unknown, or if known and reside outside of or cannot be found within the state, publication of summons must, of necessity, be sufficient as provided by our statutes.

. . . . . .

> If the power assumed by the Legislature in the provisions of this act in regard to the service of summons be sustained by this court, it would lead to most fearful results, as it would enable them by special and limited law to settle controversies over titles to private property, and to take the property of one person against his consent and give it to another."

We cited these two cases and quoted from them at even greater length in our opening brief in the California Supreme Court. Yet Mr. Justice Shaw says in the opinion (Transcript p. 47) (italics ours):

> "The further claim is made that there can be no valid service by publication in any case unless there has been some preliminary proof to the court as foundation therefor that the person to be affected by the published notice resides out of the state or has departed from the state, or cannot after due diligence be found within the state, or conceals himself to avoid service of summons. One or the other of these facts are required to be stated, by the code, in order to obtain an order for publication of summons in an ordinary action. (Code Civ. Proc., sec. 412). *We are cited to no decision holding that preliminary proof to the court of either of these things is essential to constitute due process of law in case of service by publication.*"

We must presume that the learned Justice meant by the last sentence that we had cited no *California* cases in point. The reason for that is aptly given by his preceding sentence. Since the code has provided for the proof of these facts before publication, it is only natural that no cases have arisen attacking any pro-

ceeding for lack of such provision. In fact any service by publication without some showing of necessity is so clearly unreasonable that few legislatures have provided for it. There are, however, other cases which uphold the principles of *Bardwell v. Anderson* and *Bear Lake County v. Budge.*

In

Brown v. Board, 50 Miss. 468,

the court said (p. 488):

> "We think that the special statute under which the suit was brought is in contravention of the constitution.
>
> • • • • • • •
>
> Because it expressly denies personal service of process upon the defendants, when it is evident that many, perhaps most of them are residents of the county and state, and amenable to such process.
>
> Because, in a personal suit, it directs notice by publication, without designating the names of the defendants, when many, if not most of them, by the general law, were entitled to personal service of notice, and when that form of publication directed is only allowable, and in instances where the complainant does not know, and has not the means of finding out the names of parties."

The general doctrine is also discussed in

State v. Gilbert, 56 Oh. St. 575; 47 N. E. 551, and

People v. Simon, 176 Ill. 165; 52 N. E. 910; 44 L. R. A. 801.

While no case in the United States Supreme Court seems to have presented the exact question, there are several opinions which show that this court recognizes

that substituted service requires some reasonable justification. In

Settlemeier v. Sullivan, 97 U. S. 444; 24 L. ed. 1110,

Mr. Justice Field said in giving the court's opinion,

> "The statute of the state in force at the time required service in cases other than those brought against corporations, or persons laboring under some disability as minors, or as being of unsound mind, to be made by delivering a copy to the defendant personally; or, if he could not be found, to some white person of his family above the age of fourteen years, at his dwelling house or usual place of abode. If it be admitted that substituted service of this kind upon some other member of the family is sufficient to give the court jurisdiction to render a personal judgment against its head, binding him to the payment of money or damages, it can only be where the condition upon which such service is permissible is shown to exist. The inability of the officers to find the defendant was not a fact to be inferred, but a fact to be affirmatively stated in his return. The substituted service in actions purely *in personam* was a departure from the rule of the common law, and the authority for it, if it could be allowed at all, must have been strictly followed."

To the same effect is

Romig v. Gillett, 187 U. S. 111; 47 L. ed. 97.

In a case arising under a California proceeding to quiet title to land,

Jacob v. Roberts, 223 U. S. 261; 56 L. ed. 429,

plaintiffs in error objected after judgment that sufficient search for them before publication had not been made. The court said (p. 267):

"We have set out the affidavit. It shows inquiry of the whereabouts of plaintiffs in error of their former neighbors and other residents of San Diego. One of them replied that he had not heard of them; of their residence or postoffice address, for over twenty-five years. Another also had not heard from them and did not believe they were in the state. Inquiry was also made of nineteen county officers and three state officers, sheriffs, county clerks, tax collectors, county and state; assessors, county and state; and of the postmasters of the state. Neighbors, residents, and officers who, in the intercourse and business of life would almost necessarily come in contact with plaintiffs in error or hear from them, had no knowledge of them. It may, however, be said, and indeed is said, that other parts of the state were not searched, and that this was necessary, as the process of the court could run to every county in the state. The requirement is extreme and we are cited to no cases in which it is decided to be necessary. The affidavit shows, besides, that defendant in error made diligent inquiry to find plaintiffs in error, and had no knowledge of their residence or postoffice address, or of either of them, or where they or either of them could be found.

We think plaintiffs in error were afforded due process.

Judgment affirmed."

If no preliminary proof of necessity is required before publication may be good, why did the court here go so deeply into the question whether such a showing had been made and whether it was sufficient?

Even against residents of the state due process requires that publication, when made at all, be such as may reasonably be expected to bring the matter to their attention. We shall discuss this question more

fully when we turn to a consideration of this proceeding as one *quasi in rem*.

But even if the proceeding should be held good as to residents, as we have pointed out above it is indisputably invalid as an action *in personam* against non-residents. If good as to residents and invalid against non-residents, is the proceeding entirely invalid? In a case in which it was actually known which defendants were residents and which were non-residents, it might be possible to sustain the statutes as applied to residents only. But in this case that is unknown and the defendant bank cannot be made to bear the burden of chance in an attempt to sustain the case in part. It is possible that every one of the defendant depositors may be a non-resident. Indeed, if the facts give rise to any presumption it is that these depositors have long since departed the state. If so, this proceeding is unconstitutional and void as to any one of them and any one of them can recover his deposit from the bank in spite of this proceeding. Thus, if the state can recover a single dollar in this action it *may* impose a double liability on the bank. Since there is no provision insuring against such possibility, the taking is clearly unconstitutional and void.

2. If the proceeding is quasi in rem it does not provide due process because there is no seizure of the res or its equivalent and because the notice is unreasonable.

As we have pointed out heretofore in this brief the proceeding in question is in our opinion really in the

nature of a combination of two *in personam* actions: first, an action against an absentee depositor served only by publication, attempting to transfer his right to his deposit to the state; and second, an action by the state against the bank to collect the debt created by that deposit. The process issued against both depositor and bank is strictly personal, and the judgment, although termed an "escheat" cannot be more than a personal judgment against the bank for the amount of the deposit and accrued interest.

However, it must be admitted that the line of demarcation between actions *in personam* and those *quasi in rem* is so narrow that a slight difference in construction may swing an action from one side of the line to the other. For this reason and also because the state court has interpreted this proceeding as *quasi in rem* we shall now proceed to analyze and criticize it as *quasi in rem*.

Mr. Justice Shaw in his opinion in this case says on this point (Transcript p. 44):

> "Such proceedings are not proceedings strictly in rem; but they are proceedings quasi in rem. The proceeding is not in that respect distinguishable from an ordinary garnishee process against a debtor of a defendant to appropriate the debt to the payment of the plaintiff's demand. In such cases the defendant in the action may be a non-resident or not within reach of the process of the state court. But if service is made on the garnishee, the court has jurisdiction to dispose of that asset of the defendant and apply it to the payment of the plaintiff's debt."

Again, after quoting from *Pennoyer v. Neff* and *Cooper v. Reynolds,* he continues (Transcript p. 45):

> "The service of the summons on the bank is, under the doctrine thus established, the equivalent of a seizure of the property of each depositor in his account with the bank and gives the court jurisdiction over it to the same exetent as in cases in garnishment and other proceedings quasi in rem. To the same point see 6 Corp. Jur., p. 90, where many cases are cited."

The cases referred to are all attachment and garnishment cases. We shall compare this proceeding with attachment or rather garnishment, but before doing so it may be well to point out that the principle upon which the United States Supreme Court has sustained garnishment proceedings against non-resident debtors in cases like

Chicago, etc. R. Co. v. Sturm, 174 U. S. 710; 43 L. ed. 1144, and

Harris v. Balk, 198 U. S. 215; 49 L. ed. 1023,

has not been extended, and that the court itself has in several cases indicated that this principle (namely that jurisdiction of the *res* gives the court power to enter a personal judgment enforceable against the *res*) has limits and cannot be carried beyond the point where its exercise is just and reasonable. Thus in

Hart v. Sansom, 110 U. S. 151; 28 L. ed. 101,

although the court had jurisdiction of the *res* (land within its borders) it was held that service by publication alone did not make a decree removing a cloud on title binding on a non-resident.

An intangible *res* was involved in the case of

New York Life Ins. Co. v. Dunlevy, 241 U. S. 518; 60 L. ed. 1140.

There it was held that jurisdiction over the proceeds of an insurance policy obtained by garnishment service on the insurance company did not give the court the right to determine, on interpleader by the insurance company, that a non-resident was not entitled to the fund, in spite of constructive service of notice, and also in spite of the fact that the interpleader action was a continuation of the same proceeding in which the non-resident had formerly been personally served within the state.

A very recent case which shows not only the possibilities of abuse of the principle of the garnishment cases but also shows that the Supreme Court recognizes those possibilities and realizes that they must be faced and a line drawn somewhere, is

Bank of Jasper v. First National Bank, 258 U. S. 112; 66 L. ed. 490.

In that case inhabitants of the town of Jasper, Florida, had bought stock in an insurance company by borrowing from the Bank of Jasper on their one-year notes secured by pledge of the stock. As part of the stock-selling scheme, the insurance company left the proceeds of the sales of stock with the bank and took certificates of deposit payable in one year in their place. Thus the stock was sold without any cash changing hands, and apparently for this reason the inhabi-

tants of Jasper bought to their limit. However, when their one-year notes became due, they found that they had been defrauded, that their stock was worthless, and that in the meantime the insurance company had sold the certificates of deposit to the First National Bank of Rome, Georgia. Nothing daunted, the inhabitants of Jasper filed bills in equity in the state circuit court against the local bank, the insurance company and its agent, and against the First National Bank of Rome, praying that the proceeds of their notes as discounted by the insurance company and deposited with the Jasper Bank be impressed with a trust in their favor and that the notes, contracts of purchase of stock and certificates of deposit be declared void. The Rome bank was served only by publication and appeared only specially to object to the jurisdiction. Nevertheless the court entered a decree for each complainant granting the relief asked and in effect subjecting the rights of the non-resident holder of the certificates of deposit to those of the inhabitants of Jasper. This was sustained by the Supreme Court of Florida.

The case reached the Supreme Court of the United States by way of collateral attack. After the proceedings above referred to, the First National Bank of Rome brought suit on the certificates of deposit against the Bank of Jasper in the federal court in Florida. Defendant pleaded in bar the decrees of the state court above mentioned. The District Court sustained this plea, but it was reversed by the Circuit Court of Appeals and the reversal affirmed in the Supreme Court.

Although the opinion by Mr. Justice Brandeis declaring the state court decree void goes in part on the ground that the certificates of deposit, being negotiable, represented the situs of the debt, and that they were not in the jurisdiction, it also reasons that even if this had been only an open book indebtedness, it could not have been reached by such a proceeding. In effect, the court holds that the purpose of the action makes it personal—one which cannot be based upon *quasi in rem* jurisdiction. The opinion reads in part (p. 119):

> "The credits—called deposits—so transferred, became an indebtedness of the Jasper Bank to the American Company. That indebtedness, if it had rested in open account, would have been property of the creditor within the state of Florida. In an appropriate proceeding it might have been reached to satisfy a claim against its owner. * * * But the suits in the state court were not proceedings of that character. In them the complainant asserted that, by reason of the fraud alleged, the Jasper bank was indebted not to any of its co-respondents, but to the complainant."

If the court cannot, by service on the bank, decree that deposits belong to residents instead of to non-residents, how can it decree that they belong to the state instead of to non-residents? If *quasi in rem* jurisdiction is not enough for the one, how is it for the other? If one is solely a personal action, why is not the other?

There is another broad field wherein *quasi in rem* jurisdiction or jurisdiction of the debtor cannot be used by a state court to shut out the rights of non-residents. These are cases arising under state insolvency acts.

The Supreme Court of the United States has uniformly held that the discharge of the resident debtor by the state court is not good against a non-resident creditor who has not appeared and proved his claim.

Ogden v. Saunders, 12 Wheat. 213; 6 L. ed. 606;
Baldwin v. Hale, 1 Wall. 223; 17 L. ed. 531;
Gilman v. Lockwood, 4 Wall. 409; 18 L. ed. 432;
Denny v. Bennett, 128 U. S. 489; 32 L. ed. 491.

There is certainly little to distinguish the jurisdiction which the state court has over the debts of an insolvent from that which it has over the debt of the bank to the depositor in the California escheat proceeding. And if it cannot bar the rights of a non-resident creditor in the first case, how can it bar those of a non-resident depositor creditor in the second?

But the proceeding in question does not even fulfill the requirements of due process for any quasi in rem action, even garnishment or attachment.

A. In the first place, jurisdiction *quasi in rem* being *in rem* requires a seizure of the *res,* or its equivalent.

Pennoyer v. Neff, supra, 95 U. S. 714; 24 L. ed. 565.

The "equivalent" is defined in

Cooper v. Reynolds, 10 Wall. 308; 19 L. ed. 931,

in the following language:

"So, also, while the general rule in regard to jurisdiction *in rem* requires the actual seizure and

possession of the *res* by the officer of the court, such jurisdiction may be acquired by acts which are of equivalent import, and which stand for and represent the dominion of the court over the thing and in effect, subject it to the control of the court. Among this latter class is the levy of a writ of attachment or seizure of real estate, which being incapable of removal, and lying within the territorial jurisdiction of the court, is for all practical purposes brought under the jurisdiction of the court by the officer's levy of the writ and return of that fact to the court. So the writ of garnishment or attachment, or other form of service, on a party holding a fund which becomes the subject of litigation, brings that fund under the jurisdiction of the court, though the money may remain in the actual custody of one not an officer of the court."

In garnishment actions (by which we mean actions in which a debt or similar intangible *res* is attached, whether called garnishment or attachment) the process served on the garnishee is not similar to the ordinary summons served on a defendant in a purely personal action but is a special writ of attachment or garnishment which effects a constructive seizure of the debt or other intangible *res* by combining an order to the officer of the court to attach the debt with a warning to the garnishee to act accordingly, that is, to hold the debt as trustee until the court has ordered its disposition.

Shinn, Attachment and Garnishment, Sections 599, 603, 612, 613;

27 Harvard Law Review, 107;

California Code of Civil Procedure, Sections 540, 542 (5).

The true nature of garnishment is thus defined in the leading federal case,

Harris v. Balk, supra, 198 U. S. 215, 223; 49 L. ed. 1023, 1026, (italics ours)

> "It is nothing but the obligation to pay which is garnished or attached * * * Notice to the debtor (garnishee) of the commencement of the suit, *and notice not to pay to his creditor* is all that can be given, whether the garnishee be a mere casual and temporary comer, or a resident of the state where the attachment is laid. His obligation to pay to his creditor is thereby *arrested*, and a lien created upon the debt itself."

The importance of the prohibition or warning to the garnishee not to pay the creditor in order to have constructive seizure binding on the garnishee is further shown by the case of

Pennington v. Fourth National Bank, 243 U. S. 272; 61 L. ed. 713,

in which an *injunction* against a bank forbidding it to dispose of a non-resident's bank account was held a sufficient seizure to sustain a decree of alimony to be paid from the account.

In the proceeding now in question the process provided for by Section 1273 of the Code of Civil Procedure, and the summons actually served on the defendant bank (Transcript p. 16) is only a personal summons to appear and defend similar to that in any civil action, and is entirely different from a writ of attachment or garnishment. There is no notice of attachment and no warning to the bank to hold the deposit subject to the orders of the court. Nothing in the

process served on the bank prohibits it from paying over the deposit to the true owner at any time before judgment in the escheat action. Indeed, we submit that the bank would probably be protected in paying over the deposit to a returning depositor even after it has been served with process in the state's action for escheat. The State Supreme Court has held that there is no escheat merely by the passage of twenty years without claim or activity.

> *State v. Savings Union Bank, etc. Co.*, supra, 186 Cal. 294; 199 Pac. 26.

The reasoning of this case is that the escheat is not complete until judgment in the escheat action. If so, the depositor is the true owner and entitled to the deposit until such judgment, and the bank is entitled to pay on his demand at any time before judgment in the absence of a warning from the court to keep the deposit. This is consistent neither with the seizure of the *res* required in garnishment nor with the continued custody and control by the court (if only through the garnishee as trustee) required in all *quasi in rem* actions.

B. In the second place, jurisdiction *quasi in rem* requires that the real defendant be given reasonable notice of the proceeding.

> "No judgment of a court is due process of law if rendered without jurisdiction in the court, or without notice to the party."
>
> *Scott v. McNeal*, 154 U. S. 34, 46; 38 L. ed. 896, 901.

"That a man is entitled to some notice before he can be deprived of his liberty or property is an axiom of the law to which no citation of authority would give additional weight; but upon the question of the length of such notice there is a singular dearth of judicial decision. *It is manifest that the requirement of notice would be of no value whatever unless such notice were reasonable and adequate for the purpose.*" (Italics ours.)

Roller v. Holly, 176 U. S. 398, 409; 44 L. ed. 520, 524.

A much longer exposition of this simple fundamental rule is contained in

Coe v. Armour Fertilizer Works, 237 U. S. 413, 424; 59 L. ed. 1027, 1032.

With reference to the question of reasonableness Mr. Justice Holmes said in

McDonald v. Mabee, 243 U. S. 90, 91, 61 L. ed. 608, 609:

"No doubt there may be some extension of the means of acquiring jurisdiction beyond service or appearance, but the foundation should be borne in mind. Subject to its conception of sovereignty even the common law required a judgment not to be contrary to natural justice. Douglas v. Forrest, 4 Bing. 686, 700, 701, 130 Eng. Reprint, 933, 1 Moore & P. 663, 6 L. J. C. P. 157, 29 Revised Rep. 695; Becquet v. MacCarthy, 2 Barn. & Ad. 951, 959, 109 Eng. Reprint 1396; Maubourquet v. Wyse, Ir. Rep. I. C. L. 471, 481. And in states bound together by a constitution and subject to the 14th Amendment, great caution should be used not to let fiction deny the fair play that can be secured only by a pretty close adhesion to fact. Baker v. Baker, E. & Co., Jan. 8, 1917 (242 U. S. 394, 61 L. ed. 386)."

This requirement of reasonableness means not only that the notice must be reasonable in time,

Roller v. Holly, supra, 176 U. S. 398; 44 L. ed. 520;

but also that its contents must be such as reasonably to inform defendants of the action pending,

Webster v. Reid, 11 How. 437; 13 L. ed. 761,

and that the place of publication must be reasonable,

Earle v. McVeigh, 91 U. S. 503; 23 L. ed. 398.

As we have already pointed out the necessity of adequate notice has been expressly recognized in the case of proceedings for the taking of bank deposits in administration of the estates of absentees and in "change of depositary" cases. Thus in the passage quoted from

Cunnius v. Reading School District, supra, 198 U. S. 458; 49 L. ed. 1125,

Mr. Chief Justice White said (p. 476):

> "Let it be further conceded, as we also think is essential, that a state law which did not provide adequate notice as prerequisite to the proceedings for the administration of the estate of an absentee would also be repugnant to the 14th Amendment."

In

Blinn v. Nelson, supra, 222 U. S. 1; 56 L. ed. 65,

the statute provided not only for notice in a newspaper, but required that such notice should be posted in two or more conspicuous places in the town where the absentee last resided, and that a copy should be mailed to the last known address of such absentee.

Nelson v. Blinn, 197 Mass. 279, 83 N. E. 889.

Of this statute on appeal to the United States Supreme Court in *Blinn v. Nelson*, Mr. Justice Holmes said (222 U. S. 6):

> "There is reasonably careful provision for notice by publication before the appointment, and the whole proceeding begins with a seizure by the sheriff of the property mentioned in the original petition."

In

State v. First National Bank of Portland, supra,
61 Ore. 551; 123 Pac. 712,

the statute provided that

> "Upon commencing such proceedings notice thereof shall be given by publication at least once each week for four successive weeks in a newspaper of general circulation, *published at the place where the bank is located*, and if no newspaper is published in that place, then in a newspaper of general circulation, *published in the county where such bank is located*." (Italics ours.)

In

Germantown Trust Company v. Powell, 265 Pa.
71; 108 Atl. 441,

the statute provided that a designated state agent shall

> "notify the person shown to be entitled to money or property, *by mail if possible*, and shall duly publish in manner prescribed, *in the city or county in which the property is held* a list of names," etc. (Italics ours.)

In this connection we also refer to

Commonwealth v. Dollar Savings Bank, 259 Pa.
138; 102 Atl. 569 (Pa.).

In

Provident Institution for Savings v. Malone, 221 U. S. 660; 55 L. ed. 899,

the accounts on deposit in a Boston bank were involved. The statute applied only to depositors *who could not be found* and required a public notice.

In the proceeding in question we submit that the provision for publication of notice is unreasonable in that it provides for publication of summons and notice in a newspaper in the *County of Sacramento, regardless of where the bank is located.* Certainly this is not "reasonably likely to bring the fact of the pendency and the purpose of the proceedings to the attention of those interested," to use the very words of the California Supreme Court in defining the essentials of constructive service in

Title, etc., Co. v. Kerrigan, 150 Cal. 289, 312, 88 Pac. 356.

If the depositor who has forgotten his deposit is still a resident of the state, he is most probably still a resident of the county where the bank is situated and therefore publication should be made there. Even if he has moved to another county in the state, the chance that such county is the county of Sacramento is very slight in view of the fact that California has fifty-eight counties. If he has moved to any other county but Sacramento or if he has moved out of the state, the most likely place to have news reach him is the county where he formerly lived or managed his affairs, which is presumably the county where he made the bank de-

posit. In fact, that is the only county in which publication is likely to have any effect at all. In that county, if anywhere, reside the people who knew him and know his whereabouts. For deposits in Security Savings Bank, publication should be in the County of San Francisco.

How does the Supreme Court of California answer this objection. Mr. Justice Shaw says (Transcript p. 45) (italics ours):

> "We see no force in this objection. A person may bring an action in any county in the state to recover money on contract, may obtain jurisdiction of the defendant for the purpose of attachment by publication, and may serve garnishee process on any debtor of the defendant who can be found in any county of the state. (Code Civ. Proc., secs. 412, 413, 540, 542, subd. 5.) The superior court of such county has jurisdiction of such action, although the defendant may never have resided therein and the person served as garnishee may reside in some other county and the contract may have been made elsewhere. The publication in such cases in the county in which the suit is brought is the universal practice. *Yet it would be no more likely to give notice to the defendant in the action than the notice provided for in these statutes.* The validity of judgments regularly obtained in that manner has never been questioned. Our numerous statutes provide for many proceedings either strictly in rem or quasi in rem, in which the property rights of individuals are affected and the notice provided for is solely by publication in some newspaper, or, in some instances, by merely the posting of notices in public places in the county, and in which the residence of the person to be affected thereby is regarded as immaterial to the validity of the proceeding."

In other words, the Supreme Court answers the objection that this publication is not reasonably likely to give notice by admitting that fact but asserting that nevertheless other publications used in practice in California are no more likely to give notice. It is as if the court were to say: "Yes, notice here is a fiction and a myth, but anyway it is the same thing in any case of publication, and so it is all right here". Many have thought that constructive service is little more than a fiction except in theory, but in this opinion the question is raised as to whether even the theory of notice need be preserved. The line of reasonableness in *quasi in rem* cases has probably already been crossed, as our discussion above indicates, but that is rather a reason for withdrawing than one for pushing on regardless of the line. Unless the further step of dispensing with constructive service be taken, the line of reasonableness must be observed. The mere fact that it has been crossed in the past does not justify an entire disregard of its existence. The California Supreme Court has in effect said that publication is necessary but that it does not have to be of a kind which is likely to have any effect.

However, in spite of the suggestion that publishing is a mere form and does not have to be effective, the California opinion proceeds to argue that publication in this proceeding was sufficient because it could be joined with or tacked to the notice required by Section 583b of the Civil Code. The opinion reads (Transcript p. 46) (italics ours):

"Ever since the year 1893, every savings bank in the state has been required to publish annually in a newspaper of the city or town in which it is situated a sworn statement showing the amount of each deposit therein, the name and last known residence of each depositor, and the fact of his death, if known, in all cases where the depositor has not made a deposit or withdrawal for more than ten years next preceding, except where the depositor is known to be living *and the deposit is less than fifty dollars.* (Stats. 1893, 183.) In 1897 these requirements were extended to all banks of deposit. (Stats. 1897, 27.) In 1905 these provisions were incorporated into the code. (Civ. Code, sec. 583b.) It is to be presumed that these statutes have been obeyed by the banks concerned. It may fairly be inferred that the owner of a deposit under fifty dollars who has not claimed it for twenty years has either forgotten it or abandoned it. It is altogether improbable, after these annual publications of deposits over fifty dollars, that any person who resided in the county in which the bank was situated would remain ignorant thereof, or that, being aware of it, he would have not claimed it before twenty years had elapsed."

There are two conclusive objections to this reasoning. The first is that Section 583b applies only to accounts amounting to $50 or more. In the present action, sixteen of the twenty-one defendant depositors had deposits of less than $50 and as to all of them, there was no prior publication, even of the kind provided by Section 583b. The opinion recognizes this but says: "It may fairly be inferred" that each such owner "has either forgotten or abandoned" his deposit. If such inference is true, is that any reason why publication as

to him is unnecessary? On what legal principles does a *forgetful* owner lose the right to notice of an action concerning his property?

The second objection to the "tacking notice" argument, is that the notice required to be published under Section 583b is in no sense a warning of this or any other action. It consists of a mere list of names of depositors and amounts of deposits which have been untouched and unclaimed for ten years and does not contain a word about escheat or about any court action affecting the deposit. It does not even notify the depositor that he must come in and claim his deposit in order to protect his rights. In fact, its only apparent purpose is to recall to the mind of a forgetful depositor that he has such a deposit—not to notify him that he must take some action regarding it. Therefore it cannot in any sense be considered as process in this action. An extra-judicial or casual notice, even of the action itself, would not be deemed a substantial substitute for due process of law.

Coe v. Armour Fertilizer Works, supra, 237 U. S. 413; 59 L. ed. 1027.

C. Lastly, in the consideration of this proceeding as *quasi in rem*, it is a fundamental rule that such an action binds only named defendants because it is in essence a personal action with *in rem* features, those features being only that jurisdiction of the *res* gives jurisdiction to render judgment enforceable out of the interests of parties in the *res*. In distinguishing *quasi*

in rem actions from those strictly *in rem*, Mr. Justice Field said in

Freeman v. Alderson, 119 U. S. 185, 30 L. ed. 372:

> "There is, however, a large class of cases which are not strictly actions *in rem*, but are frequently spoken of as actions *quasi in rem*, because, though brought against persons, they only seek to subject certain property of those persons to the discharge of the claims asserted. Such are actions in which property of non-residents is attached and held for the discharge of debts due by them to citizens of the State, and actions for the enforcement of mortgages and other liens. Indeed, all proceedings having for their sole object the sale or other disposition of the property of the defendant, to satisfy the demands of the plaintiff, are in a general way thus designated. But they differ, among other things, from actions which are strictly *in rem*, in that the interest of the defendant is alone sought to be affected, that citation to him is required, and that judgment therein is only conclusive between the parties."

To the same effect are:

Day v. Micou, 18 Wall. 156; 21 L. ed. 860;
Conrad v. Waples, 96 U. S. 279; 24 L. ed. 721.

This rule has been applied to escheat proceedings in the following cases:

Stokes v. Dawes, Fed. Cas. No. 13,477;
Newman v. Crowls, 60 Fed. 220;
Northwestern Clearance Co. v. Jennings, (Ore.) 210 Pac. 884.

We have already considered the question as to who are parties to this proceeding in our argument to the

effect that the depositor is a party and hence precluded from relief under C. C. P. 1272. As we pointed out then, the California Supreme Court expressly declines to decide who are parties to this proceedings, and even suggests that the words may be confined to those appearing in the action (Transcript pp. 47-8). If this is the correct construction no one except the bank itself is bound in the present action, and any rightful claimant can come in and recover from the bank on the theory that this action is not res adjudicata as to him. Even if the depositor is a party, as we believe, the mere giving of notice to all claimants without joining them as defendants does not make them parties. This notice is a mere afterthought of the legislature aimed at giving all claimants a beneficial notice but not to foreclose their rights. Therefore, any one who has a right to the deposit other than the depositor (as for example his heirs, if he is dead) is not made a party and his rights are not affected. Since this is true it imposes on the bank a possible double payment of the deposit, once to the State and once to such claimant, and thus amounts to an unconstitutional taking of the bank's property.

The whole idea of the statute in question is based upon the probability of death, and yet there is no attempt to find the depositor's heirs or even to join them as parties. Nevertheless the statute attempts to foreclose the rights of all parties in the deposit, even though they may be transferees before the action is brought.

Such an attempt is as invalid as it was held to be in

Postal Telegraph Cable Co. v. Newport, 247 U. S. 464; 62 L. ed. 1215.

In that case the courts of Kentucky had sustained a proceeding in which the rights of a prior owner of real property were determined in an action against its successor—an action in which the prior owner was not joined as a party. The Supreme Court of the United States, in an opinion by Mr. Justice Pitney, rejected the argument of privity and held that the proceeding was void as to the prior owner. The following words from the opinion are significant (p. 476):

> "And as a state may not, consistently with the 14th Amendment, enforce a judgment against a party named in the proceedings without a hearing or an opportunity to be heard (Pennoyer v. Neff, 95 U. S. 714, 733, 24 L. ed. 565, 572; Scott v. McNeal, 154 U. S. 34, 46, 38 L. ed. 896, 901; Coe v. Armour Fertilizer Works, 237 U. S. 413, 423, 59 L. ed. 1027, 1031), so it cannot, without disregarding the requirement of due process, give a conclusive effect to a prior judgment against one who is neither a party nor in privity with a party therein."

3. The proceeding is not strictly in rem, but even if it should be so held, it does not provide due process of law.

The difficulty in analyzing this proceeding arises because of the necessity for determining whether it is *in personam* or *quasi in rem*. So far it has not been claimed that it is a proceeding strictly *in rem*, but we believe that caution requires us also to consider whether it can fairly become within that class.

In

Freeman v. Alderson, supra, 119 U. S. 185; 30 L. ed. 372,

the court said:

> "Actions *in rem,* strictly considered, are proceedings against property alone, treated as responsible for the claims asserted by the libelants or plaintiffs. The property itself is in such actions the defendant, and—except in cases arising during war, for its hostile character—its forfeiture or sale is sought for the wrong, in the commission of which it has been the instrument, or for debts or obligations for which by operation of law it is liable. The court acquires jurisdiction over the property in such cases by its seizure, and of the subsequent proceedings by public citation to the world, of which the owner is at liberty to avail himself by appearing as a claimant in the case."

As this quotation indicates, the true case of an action strictly *in rem* is found in admiralty or criminal condemnation proceedings, in which the *res* is tangible, is seized by the officer of the court (actually or constructively) and is named as defendant. There are, of course, cases where one of these elements is lacking and which are spoken of as *in rem,* but the language used in these instances is to be construed as meaning that such proceedings are broadly *in rem,* and not as defining them as strictly *in rem* as distinguished from actions *quasi in rem.* Because in the present proceeding the *res* is intangible, is not seized, and is not proceeded against as defendant, but only used collaterally in satisfying a personal judgment against bank and depositor, there

seems to be no doubt that it is not strictly *in rem*, but that it is *quasi in rem*, if *in rem* at all.

However, even an action strictly *in rem* requires seizure of the *res*,

Freeman v. Alderson, supra, 119 U. S. 185; 30 L. ed. 372;

The Mary, 9 Cranch 126, 3 L. ed. 678;

Scott v. McNeal, supra, 154 U. S. 34, 46; 38 L. ed. 896;

Windsor v. McVeigh, 93 U. S. 274; 23 L. ed. 914.

On this point our argument under the heading of *quasi in rem*, namely that there is here no seizure or its equivalent, is referred to as applying with even greater force.

Moreover, even in actions strictly *in rem*, notice of the proceeding is required. In *Windsor v. McVeigh*, supra, the court said (23 L. ed. 916):

> "The jurisdiction acquired by the seizure is not to pass upon the question of forfeiture absolutely, but to pass upon that question after opportunity has been afforded to its owner and parties interested to appear and be heard upon the charges. To this end *some notification of the proceedings, beyond that arising from the seizure*, prescribing the time within which the appearance must be made, is essential."

To the same effect see

Freeman v. Alderson, supra, 119 U. S. 185; 30 L. ed. 372;

The Mary, supra, 9 Cranch 126; 3 L. ed. 678;

Scott v. McNeal, supra, 154 U. S. 34; 38 L. ed. 896;

Tyler v. Judges, 175 Mass. 71; 55 N. E. 812; 51 L. R. A. 433;

King Tonopah Mining Co. v. Lynch, 232 Fed. 485;

People v. Three 100-Gallon Stills, 119 Misc. Rep. 668; 197 N. Y. Supp. 882,

and cases collected in a note, 8 A. L. R. 891-3.

Any expressions of opinion apparently to the contrary may be explained on the ground that in certain cases seizure of the *res* itself is sufficient notice. Such may be the case when a ship or some similar object is seized, but it obviously does not apply to an intangible *res, a fortiori* where it is a debt or deposit in the control of another than the owner or his agent. Therefore, our argument above as to unreasonableness of notice applies with equal force whether the proceeding is strictly *in rem* or *quasi in rem.*

III.

FINALLY THE STATUTES HERE INVOLVED ARE RETROACTIVE AS TO ALL DEPOSITS INVOLVED IN THIS ACTION AND AMOUNT TO AN IMPAIRMENT BY STATE LAW OF THE OBLIGATIONS OF CONTRACTS.

As we have shown heretofore, the statutes under which this action was begun were passed in their present form in 1915 (Section 1273 of the Code of Civil Procedure was added by Statutes 1915, p. 107, and Section 15 of the Bank Act was amended by Statutes 1915, p. 1106). This action was commenced in 1916 and under the allegations of the complaint all of the deposits in-

volved were made twenty years or more before the time of filing suit, that is before the end of the year 1896. In this case, then, the statutes of 1915 were plainly applied retroactively to contracts of deposit made in or before 1896. The contracts thus could not have been made with reference to such statutes, and it is our contention that the statutes impaired the obligations of those contracts in violation of Article I, Section 10, of the Constitution of the United States.

The obligation of each of these contracts of deposit, like that of any bilateral contract, is two-sided, and on each side are rights which cannot be impaired without impairing the binding force or obligation of the contract. On the one side is the right of the bank to keep the loan of the depositor for the term of the deposit, which is until demand in all ordinary bank-deposit cases.

Marine Bank v. Fulton Bank, 2 Wall. 252; 17 L. ed. 785;

New York County National Bank v. Massey, 192 U. S. 138; 48 L. ed. 380;

Burton v. U. S., 196 U. S. 283; 49 L. ed. 482;

Smith's Cash Store v. First Nat. Bank, 149 Cal. 32; 84 Pac. 663.

When the state attempts to take the deposit from the bank without any proof of the death of the depositor (which might be held to give the state the right to make demand), there can be no doubt that this contract right of the bank is impaired, and in fact abrogated. The bank is forced to repay its loan without de-

mand by the depositor or his lawful representative, for the mere fact of absence without proof sufficient to raise even a presumption of death does not make the state his representative—at least unless the statute is already in effect when he makes the deposit. The effect of such a law is stated in the opinion of Mr. Chief Justice Marshall in that most celebrated case arising under the "contracts clause",

Dartmouth College v. Woodward, 4 Wheat. 518; 4 L. ed. 629,

where he says (p. 652):

> "On the effect of this law, two opinions cannot be entertained * * * The whole power of governing the college is transferred from trustees appointed according to the will of the founder, expressed in the charter, to the executive of New Hampshire. The management and application of the funds of this eleemosynary institution, which are placed by the donors in the hands of trustees named in the charter, and empowered to perpetuate themselves, are placed by this act under the control of the government of the state. The will of the state is substituted for the will of the donors, in every essential operation of the college. This is not an immaterial change."

If the "management and application of the funds" of Dartmouth College could not be transferred to the "control of the government of the state" without impairing the obligation of the contract of the donors, the charter in that case, it is difficult to see how the management and application of the funds deposited in this case can be transferred to the absolute control and ownership of the state without a similar impairment of the contract between the bank and the depositor.

The right of the bank to keep the possession of the deposits and to loan them out as part of its general funds, is a valuable right, constituting one of the chief sources of income of any bank and especially of a savings bank. A similar profit-making contract right of a bank was protected under the "contracts clause" in the case of

Planters' Bank v. Sharp, 6 How. 301; 12 L. ed. 447.

There a state enactment forbidding the transfer of notes held by a bank was held invalid as an impairment of the contract between the bank and the maker of a note already made at the time of the passage of the act.

In other cases it has been held that a statute hastening the time of payment of a debt or making it payable before it is due under the terms of the contract, is an impairment of the obligation of the contract, either as to debtor or creditor.

People v. O'Brien, 111 N. Y. 1; 18 N. E. 692; 2 L. R. A. 255;

Randolph v. Middleton, 26 N. J. Eq. 543;

May v. Cass County, 12 N. D. 137; 96 N. W. 292.

In a few cases in which statutes have attempted to take over bank deposits for the state, the question of the effect of the "contracts clause" was raised. It was said in

Bank of Louisville v. Board of Trustees of Public Schools, supra, 83 Ky. 219; 5 S. W. 735:

"The obligation of the contract created when the deposit is made is impaired. It consists in the rem-

edy given by law to enforce it; and while the remedy may be changed, it cannot be taken away or lessened. At least not without, in the language of Mr. Cooley, (Cooley, Const. Lim. 286), leaving '*the parties a substantial* remedy according to the *course of justice*, as it existed *at the time* the contract was made.' If it be withheld or taken away, the contract has no *legal obligation* * * * To hold such a law constitutional would be equivalent to saying that the legislature may take from A his property and give it to B or a corporation, by providing that the donee shall reimburse A for it; or that he may transfer the vested contract right of A to look to B for his money or debt to a right to look to another individual."

The cases arising under the Pennsylvania unclaimed bank deposit statute did not raise the question of impairment of contract obligations as the court points out in

Commonwealth v. Dollars Savings Bank, supra, 259 Pa. 138; 102 Atl. 569:

"Before leaving this branch of the case, albeit defendant does not raise the point, it may be well to suggest that, since the deposits in controversy were all made subsequent to the act of 1872, supra, in each instance the contract of the depositary must be treated as subject to the terms of the statute here in question; therefore the present proceedings can in no sense be said to constitute an impairment of the obligations of these contracts."

The court would clearly have reached a different result if the statute had been subsequent to the deposits.

In the case of

Provident Institution for Savings v. Malone, supra, 221 U. S. 660; 55 L. ed. 899,

the Massachusetts statute substituting state for bank as depositary was upheld even as to prior deposits and in spite of the objection that it impaired the obligation of contracts. But it was sustained solely on the ground that it was necessary for the preservation of the deposits that the state take control. It was, in other words, an exercise of the police power. As the court says (p. 664):

> "In this case, though the money is on deposit with a bank, which has faithfully kept its contract, yet the statute proceeds on the general principle that corporations may become involved, or may be dissolved; or that, after long lapses of time, changes may occur which would require someone to look after the rights of the depositor. The statute deals with accounts of an absent owner, who has so long failed to exercise any act of ownership as to raise the presumption that he has abandoned his property. And if abandoned, it should be preserved until he or his representative appear to claim it; or failing that, until it should be escheated to the state. The right and power so to legislate is undoubted."

Thus this case excepts the "change of depositary" statute from the operation of the "contracts clause" because of the better preservation of the rights of the depositor. It cannot then be authority for excepting the California statutes here involved under which the absolute property in the deposits is taken by the state and the depositor has no right of recovery. Indeed the attitude of the United States Supreme Court toward the present proceeding is well expressed in the national bank case,

First National Bank of San Jose, v. State of California, supra, — U. S. —; 67 L. ed. Adv. O. 691.

"And we think, under circumstances like those here revealed, a state may not dissolve contracts of deposit even after twenty years and require national banks to pay it the amounts then due; the settled principles stated above oppose such power.

"Does the statute conflict with the letter or general object and purposes of the legislation by Congress? Obviously, it attempts to qualify in an unusual way agreements between national banks and their customers long understood to arise when the former receive deposits under their plainly granted powers."

Although this *language* is confined to banks established by acts of Congress, its *meaning* is not.

Thus far we have been discussing principally the impairment of the rights of the bank because the bank in this case is the complaining party. The rights of the depositor under the contract are, however, inextricably fused with those of the bank, and the bank in this case is entitled to object to an impairment of the obligation of the depositor's contract for the same reason that it is entitled to object to any taking of property from the depositor without due process of law; if this proceeding is unconstitutional as to the depositor, the latter is not barred from future recovery against the bank, and if he is not barred, the present taking by the state is a taking of the bank's property without compensation and is unconstitutional.

What are the depositor's rights under the contract? The most important one is the right to receive *from*

the bank on demand the amount of his deposit and accrued interest. It is an impairment of this right to provide, as was done in Massachusetts, that henceforth he can recover only from the state and not from the bank; but such an impairment may be on the whole for his own good and hence within the police power. However, when the remedy against the bank is taken away and none against the state substituted, there is obviously an impairment and there is equally obviously no justification under the police power. As far as the depositor's contract is concerned, this proceeding amounts to a mere sequestration and confiscation of a debt due to him, similar to that attempted by Virginia against Unionists in the Civil War and held void as an impairment of contract obligations in

Williams v. Bruffy, 96 U. S. 176; 24 L. ed. 716.

In that case the state's attempted sequestration was held no defense to debtors in subsequent actions by the Unionist creditors. Similarly this California proceeding would be no defense to the bank, and thus is unconstitutional as to the bank as well.

There are many other cases which hold that the taking away or substantial impairment of a contract remedy, like that against the bank in this case, is an impairment of the obligation of the contract and unconstitutional. Among these are cases holding invalid as to contracts already made,

State Insolvency Laws:

Sturges v. Crowninshield, 4 Wheat. 122; 4 L. ed. 529;

Farmers' and Mechanics' Bank of Pennsylvania v. Smith, 6 Wheat. 131; 5 L. ed. 224;
Golden v. Prince, 10 Fed. Cas. No. 5,509,

State Exemption Statutes:

Gunn v. Barry, 15 Wall. 610; 21 L. ed. 212;
Edwards v. Keazey, 96 U. S. 595; 24 L. ed. 793;
Kener v. La Grange Mills, 231 U. S. 215; 58 L. ed. 189;
Minden v. Clement, 256 U. S. 126; 65 L. ed. 857,

and State Statutes extending the period of redemption of mortgages:

Bronson v. Kinzie, 1 How. 311; 11 L. ed. 143;
Howard v. Bugbee, 24 How. 461; 16 L. ed. 753;
Barnitz v. Beverly, 163 U. S. 118; 41 L. ed. 93.

In the California Escheat Statutes there is a more substantial deprivation of remedy than in any of these cases.

SUMMARY.

The statutory proceeding under which the present action was commenced is one for the absolute and final escheat of the bank-deposit of an absentee, not known to be dead. As such, it falls within none of the exceptions to the rule of due process that no state may take private property of a living person without just compensation. However, even if proceedings for the absolute escheat of an absentee's bank-deposit could be valid, this proceeding lacks the essential elements of due pro-

cess of law. First, if it is *in personam*, it is invalid as to non-residents of the state because they are served merely by publication, and as to residents because they are served by publication without prior showing of the necessity of such service. Second, if it is *quasi in rem*, it is invalid as to all depositors and claimants, because it is an unreasonable use of the fiction of *quasi in rem* jurisdiction, because there is no seizure of the *res* or its equivalent, because the notice provided for is inadequate, and unreasonable, and because it is binding only on parties to the action and does not protect the bank. Third, if it is strictly *in rem* (although we submit that it clearly is not) it is invalid for two of the same reasons, namely, failure to seize the *res* and to give reasonable notice. Finally, the proceeding is an impairment of the obligation of the contract of deposit: as to the bank, by taking from it the control and possession of the deposit; as to the depositor, by taking from him his remedy against the bank. For all of these reasons together, as well as for each separately, we contend that the proceeding is unconstitutional and we respectfully urge that the judgment of the Supreme Court of the State of California in favor of the State should be reversed.

Respectfully submitted,

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Attorneys for Plaintiff in Error.

Dated, San Francisco,
August 25, 1923.

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IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1923.

No. 21.

SECURITY SAVINGS BANK
(A CORPORATION),
Plaintiff in Error,

vs.

STATE OF CALIFORNIA,
Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

This cause was initiated by the State of California through the filing of a proceeding under section 1273 of the Code of Civil Procedure and under section 15 of the Bank Act of California for the purpose of obtaining an adjudication to the effect that certain accounts on the books of the Security Savings Bank to the credit of certain depositors had been "unclaimed" within the meaning of those statutes for more than twenty years and had thereby escheated to the state.

The bank and the persons owning those outstanding credits against the bank were joined as parties defendant. Personal service of process was made upon the bank while the other defendants were served constructively in the manner prescribed by those statutes. No defendant depositor appeared in this action and the default of each defendant depositor was accordingly entered. The action was resisted by the bank which now appeals to this court for a reversal of the judgment of the Supreme Court of California rendered in favor of the state.

Section 1273 of the Code of Civil Procedure is set out in full in the brief of plaintiff in error on pages 3 and 4. Section 15 of the Bank Act is partly quoted on pages 4 and 5 of the brief of plaintiff in error. In full it reads as follows:

> "All amounts of money heretofore or hereafter deposited with any bank to the credit of depositors who have not made a deposit on said account or withdrawn any part thereof or the interest and which shall have remained unclaimed for more than twenty years after the date of such deposit, or withdrawal of any part of the principal or interest, and where neither the depositor or any claimant has filed any notice with such bank showing his or her present residence, shall, with the increase and proceeds thereof, be deposited with the state treasurer after judgment in the manner provided in the Code of Civil Procedure. At the time of issuing the summons in the action provided for in section 1273 of the Code of Civil Procedure, the clerk shall also issue a notice signed by him, giving the title and number of said

action, and referring to the complaint therein, and directed to all persons, other than those named as defendants therein, claiming any interest in any deposit mentioned in said complaint, and requiring them to appear within sixty days after the first publication of such summons, and show cause, if any they have, why the moneys involved in said action should not be deposited with the state treasurer as in said section provided, and notifying them that if they do not so appear and show cause, the state will apply to the court for the relief demanded in the complaint. A copy of said notice shall be attached to and published with the copy of said summons required to be published by said section, and at the end of the copy of such notice so published there shall be a statement of the date of the first publication of said summons and notice. Any person interested may appear in said action and become a party thereto. Upon the completion of the publication of the summons and notice, and the service of the summons on the defendant bank, or banks, as in said section 1273 of the Code of Civil Procedure provided, the court shall have full and complete jurisdiction over the state, and the said deposits and of the person of everyone having or claiming any interest in the said deposits, or any of them, and shall have full and complete jurisdiction to hear and determine the issues therein, and render the appropriate judgment thereon. The president or managing officer of every bank must, within fifteen days after the first day of January of every year, return to the superintendent of banks and to the state controller a sworn statement showing the names of

depositors known to be dead, or who have not made further deposits, or withdrawn any moneys during the preceding twenty years. Such statement shall show in detail the following matters, viz:

First—The name and last known place of residence or post-office address of the person making such deposit;

Second—The amount and date of such deposit and whether the same are in moneys or securities, and if the latter, the nature of the same;

Third—The interest due on such deposit, if any, and the amount thereof;

Fourth—The sum total of such deposit, together with the interest added thereto due from such bank on account of such deposit or deposits and the interest thereon to such depositor, but nothing contained herein shall require any corporation or person renting lock boxes or safes in vaults for storage purposes to open or report concerning property stored therein. Such reports itemized as aforesaid shall be signed by the person making the same and shall be sworn to before a person competent to administer oaths as a full, complete and truthful statement of each of the items therein contained.

The president or managing officer of every bank must, within fifteen days after the first day of January of every odd numbered year, return to the superintendent of banks a sworn statement showing the names of depositors known to be dead, or who have not made further deposits, or withdrawn any moneys during the preceding ten years. Such statements shall show the amount

of the account, the depositor's last known place of residence or post-office address, and the fact of death, if known to such present or managing officer. Such president or managing officer must give notice of these deposits in one or more newspapers published in or nearest to the town or city where such bank has its principal place of business, at least once a week for four consecutive weeks, the cost of such publication to be paid pro rata out of such unclaimed deposits. This section does not apply to any deposit made by or in the name of a person known to the president or managing officer to be living. The superintendent of banks must incorporate in his subsequent report such returns made to him as provided in this section. If any president or managing officer of any bank neglects or refuses to make the sworn statements required by this section, such bank shall forfeit to the State of California the sum of one hundred dollars a day for each day such default shall continue. Any president or managing officer of any bank who violates any of the provisions of this section shall forfeit to the State of California the sum of one hundred dollars a day for each and every day such violation shall continue. For the purposes of this section all deposits received by any bank under the provision of section thirty-one or section thirty-one *a* of this act shall be deemed to have been deposited with such bank at the time the deposit was made with the bank from which the deposit was transferred; *provided,* that any bank which shall make any deposit with the state treasurer in conformity with the provisions of this section shall not thereafter be liable to any person for the same,

and any action which may be brought by any person against any bank for moneys so deposited with the state treasurer shall be defended by the attorney general without cost to such bank."

It is conceded that the state in this action has observed and complied with all of the requirements in each of the statutes under consideration and that the facts present a case arising thereunder. The only dispute is with respect to the law applicable to such statutes.

ARGUMENT.

1. *Preliminary.*

It has been held by the District Court of Appeal of the State of California in the case of

Mathews vs. *Savings Union Bank & Trust Co.*, 43 Cal. App. 45 (48),

and by the State Supreme Court in this cause,

State vs. *Security Savings Bank*, 186 California 419 (422),

that the statutes here under discussion are correlative and that, although separately enacted, they relate to the same subject and are to be considered and construed as if both were contained in a single act, at least with respect to the provisions as to process and notice.

The California law dealing with what may conveniently be termed the escheat of unclaimed bank accounts, as it existed prior to 1915, was upheld against an attack made by plaintiff in error, based

in part upon the contentions it is urging here, in the case of

State vs. *Security Savings Bank,* 154 Pacific, 1070.

In 1915, section 1273, C. C. P., was enacted as a new section and section 15 of the California Bank Act of 1909 was amended to harmonize with and supplement the new code section. The first case involving the statutes in question to reach an appellate court in this state was that entitled

Mathews vs. *Savings Union Bank & Trust Co., supra.,*

where it was held that the statutes do not operate to automatically pass title to the state upon the expiration of twenty years of nonclaim, and that any person not a party or a privy to an escheat judgment obtained by the state thereunder may sue the state to recover the money under the authorization of section 1272 of our Code of Civil Procedure which reads as follows:

"Within five years after judgment in any proceeding had under this title, a person not a party or privy to such proceeding may file a petition in the superior court of the county of Sacramento, showing his claim or right to the property, or the proceeds thereof. Said petition shall be verified, and, among other things must state:

The full name, and the place and date of birth of the decedent whose estate, or any part thereof, is claimed.

The full name of such decedent's father and the maiden name of his mother, the places and dates of their respective births, the place and date of their marriage, the full names of all children the issue of such marriage, with the date of birth of each, and the place and death of all children of such marriage who have died unmarried and without issue.

Whether or not such decedent was ever married, and if so, where, when and to whom.

How, when and where such marriage, if any, was dissolved.

Whether or not said decedent was ever remarried, and, if so, where, when and to whom.

The full names, and the dates and places of birth of all lineal descendants, if any, of said decedent; the dates and places of death of any thereof who died prior to the filing of such petition; and the places of residence of all who are then surviving, with the degree of relationship of each of such survivors to said decedent.

Whether any of the brothers or sisters of such decedent ever married, and, if so, where, when and whom.

The full names, and the places and dates of birth of all children the issue of the marriage of any such brother or sister of decedent, and the date and place of death of all deceased nephews and nieces of said decedent.

Whether or not said decedent, if of foreign birth, ever became a naturalized citizen of the United States, and if so, when, where, and by what court citizenship was conferred.

The post-office names of the cities, towns or other places, each in its appropriate connection,

wherein are preserved the records of the births, marriages and deaths hereinbefore enumerated, and, if known, the title of the public official or other person having custody of such records.

If for any reason, the petitioner is unable to set forth any of the matters or things hereinabove required, he shall clearly state such reason in his petition.

A copy of such petition must be served on the attorney general at least twenty days before the hearing of the petition, who must answer the same; and the court thereupon must try the issue as issues are tried in civil actions, and if it is determined that such person is entitled to the property, or the proceeds thereof, it must order the property, if it has not been sold, to be delivered to him, or if it has been sold and the proceeds paid into the state treasury, then it must order the controller to draw his warrant on the treasury for the payment of the same, but without interest or cost to the state, a copy of which order, under the seal of the court, shall be a sufficient voucher for drawing such warrant. All persons who fail to appear and file their petitions within the time limited are forever barred; saving, however, to infants, and persons of unsound mind, the right to appear and file their petitions at any time within the time limited, or within one year after their respective disabilities cease."

In the *Mathews* case the State Supreme Court refused to grant a hearing, and express approval of the Appellate Court decision in that case was given

by the State Supreme Court in its decision in the case of

State vs. *Savings Union Bank and Trust Co.*, 186 Cal. 294 (298),

where it was held, in a proceeding similar to that here involved, that this legislation is in the nature of a "statutory forfeiture," and that it must not be taken as intending to provide for an immediate escheat, but as providing that the unclaimed bank accounts shall be taken over by the state as an escheat when so adjudged in the action so provided for.

The case of

State vs. *Anglo London Paris National Bank et al.*, 186 Cal. 746,

also involved a similar proceeding in its application to national banks, and out of that cause arose the appeal to this court of the First National Bank of San Jose, one of the defendants therein, which was decided adversely to the state by this court in

The First National Bank of San Jose vs. *State of California*, ____ U. S. ____; 67 L. ed. Advance Opinions, 691.

In the opinion rendered by the state court in that cause the statutes in question were interpreted to refer not to moneys belonging to a bank but to the obligation of a bank to a depositor, the court saying:

> "We think the reasonable interpretation is that the property affected by the escheat is the credits held by the depositor against the bank."

We have now referred to all of the appeals which have been taken to appellate courts in this state in cases arising under the statutes here in question, and now pass to a discussion of the legal propositions advanced by the plaintiff in error. The argument of the plaintiff in error presents two main points, viz, that the statutes upon which this proceeding is founded are so defective in the matter of notice to the depositors that the trial court failed to acquire jurisdiction over them with the result that they have been deprived of their property rights without due process of law and, secondly, that the statutes impair the obligations of contracts.

2. *Article I, Section 10 of the Constitution of the United States.*

Beginning on page 63 of its brief, plaintiff in error seeks to persuade this court that the California statutes, given operation, impair the obligations of the contracts between the bank and the defendant depositors in violation of article I, section 10 of the federal constitution.

The first answer to this contention, and one that must be made in fairness to the state courts, is that the point is raised for the first time in this court. In the answer filed by the bank to the state's complaint it is alleged that the statutes violate section 10, article I of the constitution of the United States, but the point was not argued to the trial court or to the State Supreme Court. The decision by the latter, which

is set forth in full beginning on page 41 of the transcript on this appeal, declares in this connection that

> "The case presents the single question whether or not the provisions of the statute requiring process in actions of this character are valid under the fourteenth amendment of the constitution of the United States and section 13, article I, of our constitution, providing that no person shall be deprived of his property without due process of law."

It is the rule long established and often declared by this court that if a federal question is not raised in or passed upon by the State Supreme Court the question will not be reviewed by this court because the reviewing power of this court is confined to the judgments and decrees of the highest state court in cases in which a decision could be had.

Hagar vs. *California*, 154 U. S. 639;
Erie Railway vs. *Purdy*, 185 U. S., 148, 153;
Hooker vs. *Los Angeles*, 188 U. S. 314;
Osborne vs. *Clark*, 240 U. S. 565;
Vol. 25, Corpus Juris, page 948, *et seq.*;
Note in 63 L. R. A., page 471.

In the discussion under this head the plaintiff in error concedes that the Massachusetts statute substituting the state as depositary was upheld even as to prior desposits against the objection that it impaired the obligations of contracts, by decision of this court in the case of

Provident Institution for Savings vs. *Malone*, 221 U. S. 660,

and says that it was sustained solely on the ground that it was necessary for the preservation of the deposits that the state take control, or, in other words, that the statute represented an exercise of the police power. The California law dealing with the escheat of unclaimed bank accounts as it stood prior to 1915 was an exercise of the police power of the state and was founded on the presumption of abandonment arising from the nonclaim of depositors and lack of knowledge as to their whereabouts for a period of more than twenty years.

State vs. *Security Savings Bank*, 154 Pacific, 1070.

It is evident from the statutes in question, from the decision here appealed from, and from the other decisions by the appellate courts of this state dealing with those statutes, which we have already called to the attention of the court, that the statutory law upon which this cause rests also represents an exercise of police power of the state and is based upon the reasons and presumption mentioned in the decision in *State* vs. *Security Savings Bank*, 154 Pacific, 1070.

State legislation similar to that here under consideration was sustained against the objection that it contravened section 10 of article I of the federal constitution by the Supreme Court of Rhode Island in

Greenough vs. *People's Savings Bank*, 94 Atlantic, 706 (711).

If this court is satisfied that the California statutes proceed from the police power and that they afford

due process of law to those affected thereby, the *Malone* decision, above mentioned, will justify a holding that section 10 of article I of the federal constitution has not been violated, in the event that the plaintiff in error is able to persuade this court that it is entitled to be heard on the point. Therefore, we next direct our attention to what appears to be the chief contention of plaintiff in error.

3. *The Fourteenth Amendment.*

It is anticipated by the plaintiff in error that the state will insist before this court that the bank has no interest sufficient to assert the claim that the statutes are fatally defective in the matter of notice to depositors, and thereupon proceeds to "dispose of" such challenge. The contention by the state was disposed of adversely to the state by the State Supreme Court, and we abide by that ruling. It is important to note, however, the declaration by the State Supreme Court that "It is not necessary to determine whether or not it (the bank) could vicariously for its depositors raise the objection that the law is invalid as to them," and the announcement by this court in the *Malone* case that such an objection can be raised by the bank only when its rights are involved in those of the depositor, and that the bank in that case was not concerned with the matter of interest upon a deposit after the deposit was taken over by the state.

(a) *The Purpose of the Statutes.*

The argument of the bank, based upon the Fourteenth Amendment, rests heavily upon the assump-

tion that a person named as a defendant depositor in this action lost his rights to his credit against the bank as soon as this action was filed. This assumption is not justified, for our State Supreme Court, as above noted, has expressly approved the statement by the District Court of Appeal in the *Mathews* case that

> "Just as a statute provides for a claim of ownership after the judgment, so does it provide for a claim of ownership after the attorney general sues and before the judgment."

In other words, the state courts have held that a depositor may have claimed his deposit after this action was filed and before the state obtained judgment.

Indeed, no court in this state has held directly, or indirectly by necessary implication, that the effect of a judgment such as that rendered in favor of the state by the trial court in this action operated to bar a defendant depositor from thereafter asserting claim to and recovering the amount of his deposit or credit from the State Treasurer. The plaintiff in error, therefore, can not assume that even the judgment of the trial court in this cause operated to vest in the state title to the deposits completely and finally, except as to persons not joined as parties or not privy to this action.

The State Supreme Court herein said that the object of the judgment was to transfer the title of the property of the depositors to the state, but it did not say that the judgment has that effect or that a

defendant depositor is barred from recovering his deposit if title thereto did pass to the state by virtue of the judgment. On the contrary, that court said that the state had the power to "take charge" of deposits such as here involved, and thereupon apparently went out of its way to construe section 1273, C. C. P., in conjunction with section 1272 of the same code.

In view of the suggestions made by the State Supreme Court in its decision in this case with reference to the two sections just named, it would seem that section 1272 could reasonably be construed, and perhaps should be, to afford to any defendant depositor in this action, for none appeared, the right to recover from the state the amount held by the bank to his credit and taken over by the state, at any time within five years from the date of the delivery of that amount by the bank to the state.

It has been definitely held in the *Mathews* case and by the State Supreme Court in this case that any deposit herein taken over by the state may be recovered under section 1272 within the five-year period therein prescribed by any person entitled thereto and not a part or privy to this proceeding, and it is not unlikely that our State Supreme Court, with a complaining depositor before it, would hold that the privilege of section 1272 should also apply to him if he could show that he did not appear and, therefore, was without opportunity to assert his claim of ownership in a proceeding under section 1273, in which the state took over his deposit.

In this connection it is significant to note the provision in section 1273 that transfers of deposits thereunder made are "to be received, invested, accounted for and *paid out* in the same manner and by the same officers as is provided in the case of other escheated property," and that the quoted language is practically identical with the following language taken from section 1234 of the California Code of Civil Procedure, which section is discussed by our State Supreme Court in the case of

State vs. *Savings Union Bank and Trust Co., supra* (page 297),

> "All unclaimed deposits and dividends so paid into the state treasury must be received, invested, accounted for, and paid out, in the same manner and by the same officers as is provided by law in the case of escheated estates, and in section twelve hundred and seventy-two."

"Escheated property" is paid out in the manner provided in sections 1269 to 1274*a*, inclusive, of the California Code of Civil Procedure, and of these it is to be said that a person claiming that he is entitled to such property has the right to assert his claim within five years from the date when the property claimed passed into the possession of the state. In view of this condition of what we call our escheat law, it could reasonably be contended and held that bank accounts, or the money equivalent thereof, passing into the possession of the state are subject to recovery upon the same terms as other escheated property. If by our statutes, properly and fairly

interpreted, a five-year period is prescribed within which the defendant depositors may recover from the state, it would seem that the law might regard as sufficient to satisfy the due process of law clause such notice to the depositors as might be held inadequate under that clause if our statutes can be read only as passing title unconditionally to the state. Irrespective of the interpretation finally given to our statutes, we submit and will now argue that the notice prescribed for the benefit of the depositors is legally sufficient.

(b) *The Notice to the Depositors.*

Boiled down, the bank's claim under this head seems to be that the statutory notice to the depositors is insufficient because the publication occurred in the county in which this action was filed instead of in the city and county of San Francisco where the bank had and has its principal place of business.

No authority is cited by the bank requiring publication of such notice at the place where the bank is located, and the bank has presented no reason which would give greater efficacy to such publication than publication in the county of Sacramento. The test of the legal sufficiency of the statutes in respect to notice is that of reasonableness.

It is reasonable to assume that the legislature of California in the enactment of the statutes under discussion took into consideration the following facts and circumstances:

That it is a matter of common knowledge that banks endeavor to keep in touch with their de-

positors, particularly those whose accounts have remained dormant for a period of years.

Ever since 1893 every savings bank in the state has been required to publish annually in a newspaper of the city in which the bank is situated a sworn statement showing, with reference to deposits of more than $50 which have been dormant for more than ten years, the amount of each deposit, the name and last known residence of each depositor and the fact of his death if known, the cost of such publication to be paid out of the deposits on a pro rata basis.

The requirement of the statute of 1893 (Statutes of California for 1893, page 183) was extended to all banks of deposit in 1897 (Statutes of 1897, page 27); and in 1905 that requirement was written into the Civil Code of California (C. C. section 583b).

That it is to be presumed that each of the statutes just referred to has been obeyed by the banks concerned.

That it is the universal practice under the law of this state, as pointed out in the decision of the State Supreme Court, for publication to occur, in cases of constructive service of process, in the county where the action is filed.

That the statutes in question are in themselves a notice to the depositors

Miller vs. *County of Kern*, 137 California, 516 (523).

That the statutes apply only to depositors who are not known to be living by the president or managing officer of the bank and only when the residence of a

depositor is not known through any notice filed with the bank.

That under section 15 of the Bank Act, as that act was enacted in 1909 (Statutes of 1909, page 87) and up to 1913, it was required that every bank, including plaintiff in error, publish in every odd numbered year, at the cost of the depositors, in one or more newspapers published in or nearest to the town or city where the bank has its principal place of business at least once a week for four consecutive weeks, the amount of every deposit, with the name and address of the depositor, which was unclaimed in the sense that there had been no deposit or withdrawal for a period of ten years. This provision, between 1909 and 1913, was limited in its application to deposits of $50 in amount, but the effect of the 1913 amendment to section 15 of the Bank Act was to remove that limitation and ever since the effective date of that amendment, which was about the middle of the year 1913, the requirement just mentioned has existed and has presumably been complied with by plaintiff in error. Pursuant to the 1913 amendment to section 15 of the Bank Act there presumably was such publication in 1915, practically two years prior to the filing of this suit, which was on December 23, 1916, and a similar publication in January of 1917 which was about a year and one-half prior to the date when the trial court rendered judgment herein in favor of the state, to wit, May 13, 1918. This it seems to us is an excellent reason why the statutes under discussion do not provide for publication of

notice to depositors at the place where the bank is located.

That the county of Sacramento is the logical place for publication of notice to depositors because this action was commenced in the superior court of that county, and that county is the seat of the state government.

The State Supreme Court took into consideration the nature of the proceeding, the character of the property to be affected thereby and the conditions to which they apply, and recognized that it was for the legislature of the state to determine where the publication should occur. The same view as to the authority of a state legislature was taken by the Supreme Court of Massachusetts in the case of

Nelson vs. *Blinn,* 83 N. E., 889,

which was approved by this court in

Blinn vs. *Nelson,* 222 U. S., 1.

4. *The Nature of This Action.*

The State Supreme Court declared that this action was not strictly *in rem,* that it is not an action *in personam,* but that it is an action *quasi in rem.* The reasons therefor are set forth in the opinion of the state court and we regard them as a conclusive answer to the position here assumed by the plaintiff in error. There is no conflict in the authorities, as we understand them, as to the distinction between an action *in personam* on the one hand and an action *in rem* or *quasi in rem* on the other.

Ruling Case Law ,Vol. 1, page 328, *et seq.*
Corpus Juris, Vol. 1, page 929, *et seq.*

In addition it may be said that in the case of *Nelson* vs. *Blinn, supra,* a similar proceeding was held to be "in its nature *in rem,*" and the Supreme Court of Oregon in the case of

State vs. *First National Bank of Portland,* 123 Pacific, 712,

classified a similar proceeding as *quasi in rem,* the failure to designate it as a strictly *in rem* proceeding probably being on account of the absence of a provision for seizure.

The element of seizure, which often characterizes an *in rem* proceeding, supposedly imparts notice, but we submit that if the California statutes contained a provision for a seizure of bank funds to the extent of the amount involved in an action such as this no greater notice would be given to the depositors or to the bank than is conveyed in the personal service of process upon the bank under a statute which in terms declares that the bank, upon rendition of judgment in favor of the state, must deliver to the state the amount of the unclaimed deposits, and in the service by publication which is prescribed for the depositors. Our state court held that the service on the bank is, under the doctrines applicable to garnishments and attachments, the equivalent of seizure of the property of each depositor, and we submit that the plaintiff in error has not presented to the court any authority which would tend to show a legal weakness in that view. A credit against the bank, of course, is not capable of manual seizure and a

provision in the statutes for a garnishment would seem idle inasmuch as the bank is personally on notice of the existing law and of the demand made by the state and the obligation imposed upon the bank in the event that the state obtains judgment.

As stated by the Supreme Court of Oregon in the case of

State vs. *First National Bank of Portland, supra,*

the property over which the state asserts its sovereign right has its situs within the sovereign state and that fact, together with the provision for what we contend is reasonable notice to the depositors, confers jurisdiction to proceed to and enforce the judgment here appealed from.

The subject of an escheat must, of course, have its situs within the state, but, speaking generally, every state possesses exclusive jurisdiction over property within its boundaries.

Pennoyer vs. *Neff,* 95 U. S. 714;

Overby vs. *Gordon,* 177 U. S. 214;

Cunnius vs. *Reading,* 198 U. S. 458;

Provident Institution of Savings vs. *Attorney General,* 231 U. S. 660;

Merchants National Bank vs. *Ford,* 99 S. W. 260;

State vs. *First National Bank,* 123 Pacific 712;

United States vs. *Fox,* 94 U. S. 315.

This proposition is expressed by this court in the decision in

People ex rel. First National Bank of Joliet vs. *Brady,* 110 U. S. 864,

as follows:

> "Certain powers of government belong exclusively to the states, and certain powers exclusively to the national government. The power to regulate property within the limits of the state, the modes of acquiring and transferring it, and the rules of descent and distribution of property are subjects belonging exclusively to the jurisdiction of the state."

The authorities are practically uniform that a state may escheat unclaimed and apparently abandoned property situated within its borders. Among the many cases affirming the existence of this power in addition to those already cited herein, are:

Malone vs. *Provident Institutions for Savings,* 86 N. E. 912, affirmed in

Cunnius vs. *Reading,* 198 U. S. 458;

Commonwealth vs. *Thomas,* 131 S. W. 797;

Germantown Trust Co. vs. *Powell,* 108 Atl. 441.

Not only may a state, in the exercise of its power over abandoned property within its jurisdiction, take such property into its custody in the interest of the missing owner as well as for the sake of public expediency, but there has also been established the doctrine that a state may put an end to the former ownership of such property and may terminate the

rights of the absentee owner if perchance he should appear before the property has actually entered the possession of the state. This doctrine is clearly and strongly announced in the case of

Commonwealth vs. *Thomas, supra.*

Wherefore we submit that the judgment of the state courts should be affirmed.

Respectfully presented.

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